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PROBLEMS AND APPROACHES TO AREAWIDE WATER QUALITY MANAGEMENT. APPENDIX A. SUGGESTED REPRESENTATIVE OR MODEL LEGISLATION

INDIANA UNIVERSITY

PREPARED FOR
ENVIRONMENTAL PROTECTION AGENCY

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The purpose of this appendix is to set forth samples or models of legislation which might be enacted by the states to facilitate compliance with the requirement of Sec. 208(c) (2) and related sections of the Federal Water Pollution Control Act Amendments of 1972. This report supplements the report entitled "Problems And Approaches To Areawide Water Quality Management".

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Problems and Approaches
to
Areawide Water Quality Management

APPENDIX A

by

School of Public and Environmental Affairs
Indiana University

for the
Water Planning Division
Environmental Protection Agency

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October 1973

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ABSTRACT

This report delineates some of the legal and management problems which emerged from a legal and administrative review of the implementation of §208(c)(2) and its relationship with §208(b)(2)(C) of the Federal Water Pollution Control Act of 1972 (Act). The study on which the report is based is the result of a fifteen (15) month effort that included a review and analysis of state laws in the U.S. and an assessment of a selected sample of wastewater management organizations of varying areal jurisdictions. The study consists of a main report with two appendices separately bound plus an executive summary.

The review and analysis of the laws of the fifty states focused on (a) whether the organizations empowered to manage wastewater treatment facilities currently have adequate authority to qualify for federal assistance under the Act and (b) the authority to implement the organizational arrangements and policies described in Sections V and VI of the report.

A selected group of existing management organizations were examined as a means of (a) identifying and describing problems that may emerge in establishing wastewater management agencies in accordance with the provisions of the Act, and (b) developing alternative management models capable of satisfying the performance criteria developed in this report.

The primary focus of §208(b)(2)(C) is on two innovations in wastewater management: (1) adequate authority to manage wastewater activities on an areawide basis significantly broader than those currently operating, and (2) capability and authority to undertake water quality planning and management through control over point and nonpoint pollution sources and the control of the location of wastewater treatment facilities and other discharge sources.

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Individuals from whom information was requested were generally most cooperative and in particular instances went beyond the call of duty. We appreciate these efforts on our behalf.

Bernard R. Hyde, Jr., Project Officer for the U. S. Environmental Protection Agency responded promptly to our requests for information and generally facilitated the completion of this project. David A. Eberly succeeded Mr. Hyde as project officer in the later stages of the work and he was very helpful in bringing the project to a close.

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APPENDIX A

SUGGESTED REPRESENTATIVE OR MODEL LEGISLATION

PART ONE

1.0 INTRODUCTION

The purpose of this appendix is to set forth samples or models of legislation which might be enacted by the states to facilitate compliance with the requirement of §208(c)(2) and related sections of the Federal Water Quality Control Act Amendments of 1972 (the Act).

In Part Two, the paragraph numbering system corresponds with that used in Appendix B (Format for State Reports and the State Reports) and follows in sequence §§208(c)(2)(C) through (I) of the Act. As an example, if the state report indicates a need or desirability of legislation to comply with a problem discussed in paragraph 2.1 (authority to construct and operate treatment works) of the state report, paragraph 2.1 of this appendix provides a possible legislative solution. The matters to which this suggested legislation relates are discussed in Section IV of the report, "Problems and Approaches to Areawide Water Quality Management."

Following these paragraphs (2.1 through 2.7 in Part Two) which correspond with the State Reports and Format, additional sections will be found that deal with interlocal cooperation among local units of government and authority of a state or agency to take over operation of a defaulting or non-complying agency or community. The interlocal cooperation section, while not directly corresponding to a problem section of the State Reports, is nevertheless pertinent because such acts facilitate execution of the various agencies' appropriate portions of an areawide plan. The "take over" legislation is important to assure compliance with the areawide plan and to encourage interlocal cooperation.

In Part Three, the suggested legislation is concerned with meeting the requirements of §208(b)(2)(C) and §201(c) as such deal with land use controls and other measures which have impact on the water quality program of an area. The matters to which this suggested legislation relates are discussed in Section VIII of the report, "Problems and Approaches to Areawide Water Quality Management."

Preceding each section of suggested legislation in this appendix is a statement of the specific purpose of the legislation. Much of the suggested legislation is taken from existing laws of various states and model legislation. These sources and all other sources are listed at the conclusion of each portion of suggested legislation.

PART TWO

2.0 SUGGESTED LEGISLATURE TO COMPLY WITH §208(c)(2)(C).

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

As noted in the Format to State Reports (Part 2.1, Appendix B) this required authority presents few, if any, legal problems. The following legislation is suggested for the purpose of expanding the state concept of treatment works to adhere more closely to the concepts of the Act and to authorize, if necessary, the waste treatment management agency to construct, own and operate a "treatment works" other than the conventional, end-of-the pipe treatment plant. These definitions could include such diverse practices and systems as instream aeration and recycling processes as well as conventional treatment plants.

A. DEFINITION OF TREATMENT WORKS.

Purpose: Provide a broad definition of "treatment works."

Definition of "treatment works":

"(A) The term 'treatment works' means any [publicly owned] devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to restore and maintain the chemical, physical and biological integrity of the state's waters, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, 'treatment works' means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, industrial waste, and waste in combined storm water and sanitary sewer systems."

Source: Adapted from §§101(a), 201 and 212(2) of the Act.

B. SHORT DEFINITION OF TREATMENT WORKS.

The following is a shorter definition which provides a broad concept of "treatment works."

Definition of "treatment works":

"The term 'treatment works' means any [publicly owned] devices, systems of facilities used to restore and maintain the chemical, physical and biological integrity of the state's waters."

Source: Adapted from §101 (a) of the Act.

C. AUTHORIZATION TO ACCEPT WASTES AND SERVE USERS BEYOND POLITICAL JURISDICTION.

Purpose: To give the treatment agency the authority to accept wastes for treatment from users outside the political boundaries of the agency. Authorization to accept wastes beyond jurisdiction:

"Every [insert agency] shall have the power to acquire any sewer, drain, or system of sewerage and drainage already established and constructed; and to acquire land within or without the boundaries of the [agency] for a waste water treatment facility, and to accept wastes for treatment from any persons located within or without the [agency] boundaries."

Source: Suggested by authors and adapted from South Dakota, S.D. Compiled Laws Ann. §9-4-8-2 (1967).

D. ALTERNATIVE PROVISION FOR ACCEPTING WASTES.

Purpose: Same.

"The [insert agency] by formal action, and after consultation with the municipalities affected, may extend the boundaries of service regions or districts, combine two or more service regions or districts or parts thereof and combine, abandon, extend, enlarge, improve, or make any other modification of projects serving one or more service districts, provided that no such change will diminish any existing level of service rendered to the district or districts concerned.

Source: Maryland, Md. Ann. Code art. 33B, §5; (Supp. 1972).

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

This necessary authority is possessed, though not always in express terms, by the vast majority of the state and local agencies studied. The statute set out in Section A eliminates the possibility that local agencies' compliance with this requirement could be questioned due to an apparent capability of the state grant disbursing agency to divert grant funds. The statutes set out in subsections B and C of this section illustrate two alternative means of providing local management agencies with the authority to accept and utilize grants.

A. NON-DIVERSION PROVISION.

Purpose: To prevent an intermediate agency from diverting grant funds to uses other than those approved in the grant or to prevent grant funds from being used for any other purpose.

Non-diversion provision:

"Notwithstanding any other provisions of the laws of this state or any of its political subdivisions, grants or funds received from any source, including the federal government, shall not be used for any purposes other than those for which the grant was made or the funds were designated, nor shall such grants or funds be disbursed to any agency or agencies except those designated in the grant. Each [agency] receiving grants or funds is authorized to account to the granting agency or donor in such manner as may be required by such granting agency or donor."

Source: Suggested by the authors.

B. GRANT ACCEPTANCE ACT (Long Form).

Purpose: To provide local management agencies with the grant acceptance capability required by the Act.

Grant acceptance act:

"Every [enumerate state and local agencies to which applicable] shall have power and is hereby authorized:

(1) To accept from any federal agency or any other source grants for or in aid of the construction of any public works project, provided that such project is one which the recipient

agency is authorized or required by law to undertake or is in furtherance of any lawful purpose for which the agency is authorized or required by law to make an appropriation;

(2) To make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the [agencies] may be necessary or proper for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of any federal act; to make all other contracts and execute all other instruments necessary or proper in or for the furtherance of any public works project and to carry out and perform the terms and conditions of all such contracts or instruments;

(3) To subscribe to and comply with any rules and regulations made by anh federal agency with regard to any grants or loans, or both, from any federal agency;

(4) To perform any acts authorized herein through or by means of its own officers, agents and employees, or by contracts with corporations, firms or individuals;

(5) To sell bonds at private sale to any federal agency without any public advertisement; to issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the governing body of the [agencies] issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project, provided nothing herein shall be construed to authorize the issuance of bonds or other obligations for any purpose by any agency not authorized to issue bonds or other obligations for such purpose under any other law heretofore or hereafter enacted, nor to dispense with the approval by a state department, board, officer or commission of a public works project where such approval is necessary under provisions of existing law;

(6) To include in the cost of a public works project for the furtherance of which grants or loans or both are sought the cost of architectural, engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other acts preliminary to the construction of public works;

(7) To exercise any power conferred herein for the purpose of obtaining grants or loans, or both, from any federal agency

or other source independently or in conjunction with any other power or powers conferred herein or heretofore or hereafter conferred by any other law;

(8) "To do all acts and things necessary or proper to carry out the powers expressly given herein."

Source: Adapted from the Washington Emergency Public Works Act; Wash. Rev. Code Ann. §§39.28.010-39.28.030(1972).

C. GRANT ACCEPTANCE ACT (Short Form).

Purpose: To provide local management agencies with the grant acceptance capability required by the Act.

Grant acceptance act:

"In addition to the right, power and authority granted by any Act, [insert agencies] are authorized to apply for and accept grants and loas from and contract with the United States Government, the State of (name of state) or any department, agency or instrumentality thereof as and when the same is created or empowered to act for the United States or the State of (name of state), for the purpose of aiding in financing the establishment, construction, improvement, extension, purchase or use of any public work project within the scope of or relating to the authorized corporate functions and operations or powers of the particular [agency]."

Source: Illinois; Ill. Ann. Stat. Ch. 29, §33a(Supp. 1972).

D. ALTERNATIVE GRANT ACCEPTANCE ACT.

Purpose: Same.

Grant acceptance act:

All [insert agencies] shall have the power to make application for, receive, and accept from any State or federal government or any agency, instrumentality, or subdivision thereof, grants for or in aid of the planning, financing, construction, acquisition, maintenance, or operation of any project, and to receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such grants and contributions may be made in the furtherance of the purposes of this article.

Source: Maryland; Md. Ann. Code art. 33B, §4 p (Supp. 1972).

2.3 Authority to Raise Revenues, Including The Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

As noted in the Format to State Reports (Parts 2.3, 2.3.1 and 2.3.2; Appendix B), most waste treatment management agencies have authority to raise revenues and assess waste treatment charges ("user charges"). The problems, if any, are the limitations which may exist on the available methods and systems of user charges and the authority to implement industrial cost recovery systems. Are the systems or methods of charges such (i) that each category of user can be required to pay its proportionate share of waste treatment services provided by the agency [§204(b)(1)(A) of the Act], and (ii) that full recovery can be had from industrial users of waste treatment works of the federal portion of the construction costs reasonably attributable to treatment of such industrial wastes [§204(b)(1)(B) of the Act]?

The following suggested legislation could be enacted for the purposes stated.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

A. PROPORTIONATE CHARGING PROVISION.

Purpose: Charge each category of user its proportionate share of treatment costs.

Proportionate charging provision:

"The [agency] may [or shall] fix the price or charges for its waste treatment services rendered to users within and without the territorial jurisdiction of [such agency], provided that the rates charged must be uniform for the same class of customers or service and represent the proportionate share of treatment costs of such class of customers or service. In classifying customers served or service furnished by such system of sewerage, the [agency] may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the territorial jurisdiction of the [agency]; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the sewage delivered and the time of its delivery; capital contributions made to the system, including but not limited to, assessments; and any other matters which present a reasonable difference as a ground for distinction."

Source: Washington; Wash. Rev. Code Ann. §35.92.020(1965).

B. ALTERNATIVE PROPORTIONATE CHARGING PROVISION.

Purpose: Same.

Alternative proportionate charging provision:

"Such charges shall be as nearly as may be in the judgment of the [agency] equitable and in proportion to the service rendered and taking into consideration in the case of each such user the quantity of sewage produced and its concentration, strength, or [water] pollution qualities in general."

Source: Iowa, Iowa Code Ann. §393.2(1949).

C. ALTERNATIVE PROPORTIONATE CHARGING PROVISION (II).

Purpose: Same.

Another proportionate charging provision:

"Charges made for sewer service directly rendered shall be as nearly as possibly proportionate to the cost of furnishing the same, and sewer charges may be fixed on the basis of water consumed, or by reference to the quantity, pollution qualities and difficulty of disposal of sewage produced, or on any other equitable basis including, but without limitation, any combination of these referred to above."

Source: Minnesota; Minn. Stat. Ann. §444.075(3)(Supp. 1972).

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

A. RECOVERY OF INDUSTRIAL PORTION OF CONSTRUCTION COSTS PROVISION.

Purpose: Authorizes recovery from industry of its proportionate share of construction costs attributable to treatment of industrial wastes.

Recovery of industrial portion of construction costs provision:

"In providing works for the treatment of industrial sewage, commonly called industrial wastes, whether the industrial sewage is disposed of in combination with municipal [other] sewage or independently, the [agency] has authority to determine and collect therefore, from the industrial producer thereof, the fair additional construction, maintenance and operating costs attributable to treating such industrial producer's waste [over and above those covered by normal taxes]."

[Arbitration procedure omitted.]

Source: Illinois; Ill. Ann. Stat. Ch. 42 §283.1(Supp. 1972).

B. ALTERNATIVE PROVISION FOR RECOVERY OF CONSTRUCTION COSTS FROM INDUSTRY.

Purpose: Same.

Alternative provision:

"In providing a treatment works to treat industrial wastes, either independently or in conjunction with other wastes, the [agency] shall have the authority to collect from such industrial users all or any part of the construction costs of such treatment works reasonably attributed to treatment of such industrial wastes. The apportionment of such costs shall be equitable as among industrial users, and such costs may be collected by assessment, connection fee, periodic charges, or in other manners or combinations thereof as in the judgment of the [agency] is equitable and will assure such industrial cost recovery."

Source: Suggested by authors.

C. PROVISION FOR TRANSFERABILITY BY INDUSTRIAL USER OF RIGHT OR PERMIT TO DISCHARGE.

Purpose: In the event that an individual industry is committed to repay its share of the industrial cost recovery, the commitment to repay should be transferable to another industry which replaces the committed industry as a user. The following authorizes such transfer subject to consent of the agency which consent cannot be unreasonably withheld.

Transferability provision:

"The commitment of an industrial user of waste treatment service to repay its share of industrial recovery costs may be assumed by another industry replacing the former as a user of waste treatment services; provided, however, that such assumption shall not release such original or former user without the written consent of the agency which consent shall not be unreasonably withheld."

Source: Suggested by authors.

D. PROVISION PERMITTING MANAGEMENT AGENCY TO REALLOCATE INDUSTRIAL USERS' RIGHTS TO DISCHARGE AND REAPPORTIONING INDUSTRIAL COST RECOVERY.

Purpose: In the event that an industry or industries using the system decrease their use so that the treatment works has unused capacity, the management agency should have the right to permit new or additional industrial users to discharge into the system. This would necessitate a reallocation among all industrial users of the shares of industrial cost recovery.

Reallocation provision:

"The [insert agency] shall have the right to allocate and reallocate among industrial users the right to discharge industrial wastes into treatment system. In the event of such reallocation, the share of industrial cost recovery of each participating industry shall be reallocated proportionately among all industrial users; provided, that the share of an industrial user may not be increased except in proportion to its increased use of the system.

Source: Suggested by authors.

2.4 Authority to Incur Short- and Long-term Indebtedness. [§208(c)(2)(F)].

It is a normal characteristic of treatment agencies that they possess sufficient authority to incur short- and long-term indebtedness for compliance with the requirement of §202(c)(2)(F) of the Act. The statutes included in this section are therefore not so much offered as remedial legislation but as examples of less prevalent statutory financing opportunities.

A. BORROWING IN ANTICIPATION OF STATE OR FEDERAL AID PROVISION.

Purpose: To allow municipalities to borrow in anticipation of proferred state or federal grants in order to expedite initiation of needed, grant eligible projects.

Anticipatory borrowing provision:

"Notwithstanding any other provisions of the laws of this state or any of its political subdivisions, but subject to constitutional limits on indebtedness any [enumerate agency or agencies to which applicable] which has contracted for and accepted an offer or a grant of federal or state aid or both, for a particular project for which [an agency] may raise or expend money, may, upon resolution of its [governing body], incur indebtedness in anticipation of the receipt of such aid for the particular project by issuing its general obligation notes payable in not more than one year, which notes may be renewed from time to time by the issue of other notes, provided that no notes shall be issued or renewed in an amount which at the time of such issuance or renewal exceeds the unpaid amount of the federal or state aid or both in anticipation of which such notes are issued or renewed. To any extent that the federal or state aid in anticipation of which the notes were issued when received exceeds the amount of such aid remaining to be paid under contract or accepted offer, plus the amount of any outstanding notes issued in anticipation thereof, it shall be kept in a separate account and used solely for the payment of such outstanding notes. Any provision of state law [or of the agency charter] requiring the publication of an ordinance, vote, or resolution of the [governing body], the holding of a public hearing thereon or subjecting such ordinance, vote, order or resolution to a referendum shall not apply to any borrowing authorized under this act."

Note: In states where the constitutional restrictions on indebtedness require submission of general obligation indebtedness to a popular vote, such restriction would have to be reflected in an act of this type, seriously limiting the usefullness of the provision.

Source: Maine; Me. Rev. Stat. Ann. tit. 30, §5153 (Supp. 1972).

B. INTERIM FINANCING PENDING ISSUANCE OF DEFINITE BONDS.

Purpose: To authorize temporary financing of projects pending the issuance of definite bonds.

Interim financing provision:

"Every [insert agency] shall have power and is hereby authorized:

(1) To sell bonds at private sale to any federal agency without any public advertisement;

(2) To issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the [insert agency] issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project.

Source: Adapted from Washington Emergency Public Works Act; RCWA §39.28.020(1972).

C. FUNDING THROUGH OR BY STATE LEVEL WASTE MANAGEMENT AGENCIES.

The two statutes set out, in part, below established the Maryland Environmental Service (MES) and the New York State Environmental Facilities Corporation (EFC), two of the nation's state level agencies designed to act with or in substitution for agencies of local government in waste treatment management. While both agencies provide a range of services including planning, facility design, construction, and operation and maintenance, financing of facilities is one of their most important functions.

A comparison of the two acts shows that the capabilities of both agencies are quite similar. Both engage in planning [N.Y. §1284(9); Md. §§4(9) and 5], although the MES capabilities in this are much broader and more complex. Both may operate facilities as well as build them [N.Y. §§1285(1) and 1285(3); Md. §§4, 6, and 9]. Both are authorized to accept federal aid [N.Y. §1284(14); Md. §4(p)], and both may incur debt [N.Y. §1290, Md. §4(i)]. For both, the income from their bonds is tax exempt [N.Y. §1296(8); Md. §22].

The thrust of the two agencies is different. The EFC was designed simply to allow the state to provide needed services to local governments. While this is also an important purpose of MES, the relationship between planning and its other functions [§15] indicates that the agency was designed to institutionalize a regional approach to waste management, becoming in effect a statewide sanitary district.

The use by local governments of the services of the agencies is encouraged by a number of financial advantages which they offer. Both offer advantages of scale in providing centralized and specialized facilities of sophistication beyond the means of most local governments. In financing their facilities through these agencies, local governments can avoid exhausting their constitutional debt limitations. The bonds of these agencies will often sell more easily and at more favorable interest rates than would local issues, although it should be noted that the bonds of neither are supported by the full faith and credit of either the state or local governments.

For a more detailed analysis of MES, see the Maryland state report in Appendix B. For analysis of EFC and another state agency of this type, the Ohio Water Development Authority, see the New York and Ohio reports in Appendix B.

1. Maryland Environmental Service

ARTICLE 33B -- ENVIRONMENTAL SERVICE.

Sec. (Selected Provisions)

1. Legislative intent; purposes of article.

2. Creation and organization.

3. (omitted).

3B. (omitted).

4. Powers generally.

5. (omitted).

6. (omitted).

7. Charges for project contracts; costs of projects generally.

8. (omitted).

9. (omitted).

10. (omitted).

11. Authority to issue bonds and notes and determine matters relating thereto.

12. Provisions applicable to all bonds and notes.

13. Sources of payment of bonds and notes.

14. Refunding bonds or renewal notes.

15. Interim receipts, temporary bonds and bond anticipation notes.

16. Trust agreement securing bonds.

17. Revenues generally.

18. Trust funds.

19. Remedies of bondholders and trustees.

20. Bonds and notes are legal investments.

21. Bonds or notes not to be deemed State or local debt.

22. (omitted).

23. (omitted).

24A. (omitted).

25. Rules and regulations generally.

26. (omitted).

27. (omitted).

28. Construction of article -- Generally.

29. et seq. (omitted).

§1. Legislative intent; purposes of article.

To assist with the preservation, improvement, and management of the quality of air, land, and water resources, and to promote the health and welfare of the citizens of the State, it is the intention of the General Assembly in enactment of this article to exercise the powers of the State of Maryland to provide for dependable, effective, and efficient water supply and purification and disposal of liquid and solid wastes, to encourage reductions in the amount of waste generated and discharged to the environment, and to serve its political subdivisions and economic interests. For these purposes, the General Assembly creates an instrumentality of the State of Maryland constituted as a body politic and corporate to provide water supply and waste purification and disposal services in compliance with State laws, regulations, and policies governing air, land, and water pollution to public and private instrumentalities, and with safeguards to protect the autonomy of the political subdivisions and the rights of the private entities it serves.

§2. Creation and organization.

(a) Created; instrumentality of State; agency of Department of Natural Resources. -- There is created a body politic and corporate to be known as the "Maryland Environmental Service," hereinafter referred to as the Service. The Service is constituted as an instrumentality of the State of Maryland, and the exercise by the Service of the powers conferred by this article shall be deemed and held to be the performance of an essential governmental function of the State of Maryland. For purposes of executive organization, the Service shall be an agency within the Department of Natural Resources, and the exercise of all powers and functions of the Service shall be subject to the authority of the Secretary of Natural Resources as set forth in Article 41 of this Code or elsewhere in the laws of Maryland. However, the Secretary's authority to transfer functions, staff or funds set forth in §234(d) of this Code shall not be applicable to the Service.

§3. (omitted).

§3B. (omitted).

§4. Powers generally.

The Service is granted and has and may exercise all powers necessary for carrying out the purposes of this article, including, but not limited to, the following rights and powers:

(a) Perpetual corporate existence. -- To have perpetual existence as a corporation;

(b) Bylaws, rules, regulations, etc. -- To adopt bylaws, rules, regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, subject to approval of the Secretary of Natural Resources;

(c) Official seal. -- To adopt an official seal and alter the same at pleasure;

(d) Office facilities. -- To maintain an office or offices at such place or places as it designates, subject to the approval of the Secretary of Natural Resources;

(e) Agents, employees and servants. -- To appoint agents, employees, and servants, subject to the approval of the Secretary of Natural Resources, and to prescribe their duties and to fix their compensation as set forth in this article;

(f) Sui juris. -- To sue and be sued;

(g) Acquisition, construction, operation, etc., of projects; project rules and regulations: purchase, lease, sale, etc., of franchise and property. -- To acquire, construct, reconstruct, rehabilitate, improve, maintain lease as lessor or as lessee, repair and operate projects within or without the State of Maryland and to establish reasonable rules and regulations for the use of any project, and to acquire, purchase, hold, lease as lessee, and use any franchise and any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or convenient for carrying out the purposes of the Service and to sell, lease as lessor, and dispose of any property or interest therein at any time acquired by it;

(h) Acquisition of real property and water rights generally; eminent domain. -- To acquire by gift, purchase, or the exercise of the right of eminent domain, in the manner prescribed by Article 33A of the Annotated Code of Maryland, as from time to time amended, real property or rights in real property or water rights in connection therewith; and at any time after the ten days following the return and recordation of the verdict or award in any condemnation proceedings, the Service may enter and take possession of the property so condemned, upon first paying to the clerk of the court the amount of said award and all costs taxed to that date, notwithstanding any appeal or further proceedings upon the part of the defendant; but at the time of said payment, however, the Service shall give its corporate undertaking to abide by and fulfill any judgment in such appeal or further proceedings.

(i) Borrowing money; issuing bonds and notes and securing same. -- To borrow money and to issue bonds or notes for the purpose of paying all or any part of the cost of any one or more projects and to provide funds to be paid into any debt service reserve fund, and to secure the payment of such bonds or note or any part thereof by pledge or deed of trust of all or any part of its revenues or other available moneys to combine projects for financing purposes and to make such agreements with or for the benefit of the purchasers or holders of such bonds or notes, or with others in connection with the issue of any such bonds or notes, whether issued or to be issued, as the Service may deem advisable and in general to provide for the security for such bonds or notes and the rights of the holders thereof;

(j) Combining projects. -- To combine, after consultation with the municipalities affected, one or more water supply, waste water purification or solid waste disposal project with any other project as a single system for the purpose of operation or of financing;

(k) Rates, fees and charges. -- To fix, alter, charge, and collect rates, fees, and charges for the use of or for the services furnished by its projects;

(l) Contracts with federal, State or municipal governments and others. -- To enter into contracts with the federal or any State government, or any agency, instrumentality or subdivision thereof, or with any municipality or person within or without the State of Maryland providing for or relating to the furnishing of services to or the facilities of any project of the Service, or in connection with the services or facilities provided by any water supply project, solid waste project or waste water purification project owned or controlled by the other contracting party, including contracts for the construction and operation of any project which is in this State or in such adjoining state;

(m) Contracts and agreements generally. -- To make and enter into all contracts or agreements, as the Service determines, necessary or incidental to the performance of its duties and to the execution of the purposes of and the powers granted by this article, including contracts with the federal or any State government, or any agency, instrumentality, or municipality thereof or with any person on terms and conditions the Service approves, relating to (1) the use by the other contracting party or the inhabitants of any municipality of any project acquired, constructed, reconstructed, rehabilitated, improved or extended by the Service under this article or the services therefrom or the facilities thereeof, or (2) the use by the Service of the services or facilities of any water supply system, solid wastes system, or liquid waste system owned or operated other than by the Service; the contract may provide for the collecting of fees, rates, or charges for the projects provided by the Service and for the enforcement of delinquent charges for the projects; and the provisions of the contract and of any ordinance or resolution of the governing body of a municipality enacted pursuant thereto shall be deemed to be for the benefit of bondholders or noteholders;

(n) Entry upon and excavation of municipal streets, roads and other public ways. -- To enter upon and excavate any municipal street, road, or alley, highway or any other public was for the purpose of installing, maintaining, and operating a water supply, solid waste disposal or waste water purification project provided for under this article, and to construct in the street, road, alley or highway, a water supply facility or sewer or any appurtenance thereof, without a permit or the payment of a charge; subject, however, to such reasonable local regulation as may be established by the governing body of any municipality having jurisdiction in the particular respect; and if any municipal street, road, alley, or highway is to be disturbed, the governing body having control thereof shall be notified within a reasonable period of time, and the said street, road, alley, or highway shall be repaired and left by the Service in the same condition as, or in a condition not inferior to, that existing before the street, road, alley, or highway was torn up, and that all costs incident thereto shall be borne by the Service;

(o) Right of entry upon lands, waters and premises for certain purposes; liability for damage. -- To enter upon lands, waters, or premises as in the judgment of the Service is necessary, convenient, or desirable for the purpose of making surveys, soundings, borings, and examinations to accomplish any purpose authorized by this article, the Service being liable for actual damage done;

(p) Grants and contributions. -- To make application for, receive, and accept from any State or federal government or any agency, instrumentality, or subdivision thereof, grants for or in aid of the planning, financing, construction, acquisition, maintenance, or operation of any project, and to receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such grants and contributions may be made in the furtherance of the purposes of this article;

(q) Making plans, surveys, studies, etc. -- To make directly, or through the hiring of consultants, any plans, surveys, investigations, and studies relating to water supply, liquid and solid wastes transportation, purification, disposal techniques, and management methods or the effects of these techniques and methods, for the purpose or [of] improving or evaluating the effectiveness or economy of its services and operations; the Service may charge in part or in whole the costs of the investigations and studies against one or more service districts or may include them in part or in whole in its general operating expenses, depending on the expected applicability of the studies and investigations; and the Service may supplement grants or other aids received from the federal government or from other sources to assist in carrying out the purposes of this article;

(r) Conducting hearings and investigations. -- To conduct hearings and investigations for the furtherance of the purposes of this article; and

(s) Supplemental powers. -- To do all things necessary to carry out its purposes and for the exercise of the powers granted in this article.

(t) Limitation of powers within municipality. -- Anything in this article to the contrary notwithstanding, the Service shall not have any power to construct or otherwise establish any new solid waste disposal project or to dispose of any solid wastes within the boundaries of any municipality without the express consent of the governing body of such municipality.

(u) Permitting municipality to construct, operate, etc., facilities when Service unable to do so. -- To permit a municipality to construct, operate, maintain, expand, relocate, replace, renovate or repair facilities provided for in this article when the Service certifies that it is not in a position to provide the necessary construction, operation, maintenance, expansion, relocation, replacement, renovation or repair of facilities within the municipality. Notwithstanding other provisions in this article and limited to the circumstances in this subparagraph, a municipality shall finance construction, operation, maintenance, expansion, relocation, replacement renovation or repair of facilities in accordance with its statutory authority, including the receiving of State and/or federal grants if available. The municipality shall have the authority to fix and charge the appropriate rates sufficient to cover the costs to construct, operate, maintain, expand, relocate, replace, renovate or repair said facilities.

§5. (omitted).

§6. (omitted).

§7. Charges for project contracts; costs of projects generally.

(a) Determination of contract charges and costs. -- In calculating charges for contracts and in determining the local costs to be apportioned to a service district established pursuant to this article, the Service shall require that the charges reflect the full costs of projects. Such charges and costs to be apportioned to any particular municipality or person located within a service district shall take account of the value and capacity of any existing facility transferred by such municipality or person to the Service, and the costs and obligations assumed by the Service incidental to the transfer of such facility, and, to the extent deemed reasonable and practicable by the Service, charges shall also be based on but not necessarily limited to a formula reflecting the volume and characteristics of the wastes as they influence transportation, purification, final disposal, and time pattern of discharge.

(b) State funds to be paid to Service upon failure of municipality to pay for project. -- If a municipality fails to pay the Service for projects provided pursuant to this article within 60 days of the due date, as established by contract, then all State funds, or such portion of them as may be required, relating to the income tax, the tax on racing, the recordation tax, the tax on amusements, and the license tax thereafter to be distributed to the municipality shall be paid by the Comptroller of Maryland directly to the Service until the Service is reimbursed.

(c) Unpaid charges to be lien against property upon person failing to pay for projects. -- If a person fails to pay the Service for projects provided pursuant to this article within 60 days of the due date, as established by contract, then the unpaid bill shall become a lien against the property served and shall be referred to the Attorney General for collection.

(d) Fee may be charged by county or Baltimore City for final disposal of solid wastes. -- The governing body of any county (or Baltimore City) may charge the Service a fee not to exceed twenty-five cents (25¢) per ton for final disposal of solid waste at any solid waste disposal project located in that county (or Baltimore City).

(e) Review of project contracts. -- All contracts for proejcts shall be reviewed at least biennially by the Service and by the other contracting party, provided that a contract may be reviewed upon the request of either party at any time for the purpose or [of] renegotiating rates, fees, or other charges exacted by the Service.

§8. (omitted).

§9. (omitted).

§10. (omitted).

§11. Authority to issue bonds and notes and determine matters relating thereto.

(a) The Service is hereby authorized and empowered to provide, by resolution adopted by a majority of the board of directors, from time to time for the issuance of bonds and notes of the Service for the purpose of paying the cost of any one or more water supply projects, solid waste disposal projects or waste water purification projects or any combination thereof acquired, constructed, reconstructed, rehabilitated, improved or extended by the Service and to provide funds to be paid into any debt service reserve funds.

(b) The board of directors shall have absolute discretion to determine with respect to the bonds or notes of any issue: (i) the date or dates of issue; (ii) the date or dates and amount or amounts of maturity, provided only that no bond of any issue shall mature later than forty (40) years from the date of its issue; (iii) the rate or rates of interest payable thereon and the date or dates of such payment; (iv) the form or forms, denomination or denominations, manner of execution and the place or places of payment thereof, and of the interest thereon, which may be at any bank or trust company within or without this State; (v) whether such bonds or notes or any part thereof shall be made redeemable before maturity and, if so, upon what terms, conditions and prices; and (vi) any other matter relating to the form, terms, conditions, issuance and sale thereof.

§12. Provisions applicable to all bonds and notes.

(a) Validith of former officer's signature. -- In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons or notes shall cease to be such officer before the delivery of such bonds or notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

(b) Bonds and notes deemed negotiable instruments. -- Notwithstanding any other provision of this article or any recitals in any bonds and notes issued hereunder, all such bonds and notes shall be deemed to be negotiable instruments under the laws of this State.

(c) Form; registration, reconversion and interchange; replacement of lost, mutilated or destroyed bonds. -- The bonds may be issued in coupon or in registered form or both, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds. Provision may also be made for the replacement of bonds which become mutilated or are lost or destroyed.

(d) Bonds and notes exempt from Article 31, §§1 to 12. -- The bonds and notes shall be exempt from the provisions of §§1 to 12, inclusive, of Article 31 of the Annotated Code of Maryland, and the Service may sell such bonds and notes in such manner, either at public or at private sale, and for such price as it may determine.

(e) Consent of State agencies, etc., not required for issuance. -- The bonds and notes may be issued by the Service without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those specifically required hereunder.

§13. Sources of payment of bonds and notes.

Except as may otherwise be expressly provided by the Service, every issue of its bonds or notes shall be general obligations of the Service payable out of any revenues or other moneys of the Service, subject only to any agreements with the holders of particular bonds or notes pledging any particular receipts or revenues.

§14. Refunding bonds or renewal notes.

The service is further authorized and empowered to provide, by resolution adopted by a majority of the board of directors, for the issuance of its renewal notes or of refunding bonds for the purpose of refunding any bonds or notes then outstanding which had been issued under the provisions of this article, whether the bonds or notes to be refunded have or have not matured, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds or notes, and, if deemed advisable by the board of directors, for either or both of the following combined additional purposes: (i) paying all or any part of the cost of constructing improvements or extensions to or enlargements of any existing project or projects and (ii) paying all or any part of the cost of any additional project or projects. The issuance of such refunding bonds or renewal notes and the details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Service in respect thereto, shall be governed by the provisions of this article relating to bonds or notes, insofar as the same may be applicable.

§15. Interim receipts, temporary bonds and bond anticipation notes.

The Service, by resolution adopted by a majority of the board of directors, is further authorized and empowered to:

(a) Issue, prior to the preparation of definitive bonds, interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery: and/or

(b) Issue and sell its bond anticipation notes, the principal of and interest on said notes to be made payable to the bearer or registered holder thereof out of the first proceeds of sale of any bonds issued under this article, or from any other available moneys of the Service, provided that the authorizing resolution may make provision for the issuance of such bond anticipation notes in series as funds are required and for the renewal of such notes at maturity with or without resale. The issuance of such notes and the details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the Service in respect thereto, shall be governed by the provisions of this article relating to bonds, insofar as the same may be applicable.

§16. Trust agreement securing bonds.

(a) Bonds authorized to be issued under the provisions of this article by resolution of the board of directors may be secured by a trust agreement by and between the Service and a corporate trustee, which may be any trust company, or bank having trust powers, within or without the State. Such trust agreement, or such authorizing resolution, may pledge or assign all or any part of the revenues of the Service or of any project or other available funds of the Service. Any such trust agreement of resolution authorizing the issuance of bonds may contain such provisions for the protection and enforcement of the rights and remedies of the bondholders as may be deemed reasonable and proper, including covenants setting forth the duties of the Service in relation to the acquisition or construction of any project, the extension, enlargement, improvement, maintenance, operation, repair and insurance of any project and the custody, safeguarding and application of moneys and may contain provisions for the employment of consulting engineers in connection with the construction or operation of any project. It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of the bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board of directors. Such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust agreement may contain such other provisions as the board of directors may deem reasonable and proper for the security of the bondholders, including, without limitation, covenants to abandon, restrict or prohibit the construction or operation of competing facilities and covenants pertaining to the issuance of additional parity bonds upon conditions stated therein consistent with the requirements of this article. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of any project or projects in connection with which such bonds shall have been issued.

(b) The proceeds of the sale of bonds secured by a trust agreement shall be paid to the trustee under the trust agreement securing such bonds and shall be disbursed in such manner and under such restrictions, if any, as may be provided in such trust agreement.

§17. Revenues generally.

(a) Rentals, rates, fees and charges generally. -- The Service is hereby authorized to fix, revise, charge and collect rentals, rates, fees or other charges for the use of or for the services furnished by any project or projects, and to contract with any person or municipality desiring the use of the services or any part of any project or projects and to fix the terms, conditions, rentals, rates, fees and charges therefor. The rentals and other rates, fees and charges designated as security for any bonds issued under this article shall be so fixed and adjusted in respect of the aggregate thereof from the projects under the control of the Service so as to provide funds sufficient with other revenues, if any, (i) to pay the cost of maintaining, repairing and operating anh project or projects financed in whole or in part by outstanding bonds, to the extent such cost is not otherwise provided, (ii) to pay the principal of and the interest on such bonds as the same become due and payable, (iii) to create reserves for such purposes, and (iv) to provide funds for paying the cost of renewals or replacements, the cost of acquiring or installing equipment and the cost of enlarging, extending, reconstructing or improving any such project or projects. Such rentals and other rates, fees and charges shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the State or any political subdivision thereof, except as provided in §26 of this article.

(b) (omitted).

§18. Trust funds.

All moneys received by the Service as proceeds from the sale of bonds or notes and all moneys received by way of thos rentals, rates, fees or other charges or revenues, or portion thereof, from any project or projects, or any continuation of projects and which are designated by any authorizing resolution or trust agreement as security for such bonds shall be deemed to be trust funds to be held and applied solely as provided by the provisions of this article and in the resolution authorizing the issuance of such bonds or notes or the trust agreement securing such bonds.

§19. Remedies of bondholders and trustees.

Any holder of bonds or notes issued under this article or of any of the coupons appertaining to such bonds, and the trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either in law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of this State or granted hereunder or in the resolution authorizing the issuance of such bonds or notes or under the trust agreement, and may enforce and compel the performance of all duties required by this article or in the resolution authorizing the issuance of such bonds or notes or by the trust agreement to be performed by the Service or by any officer thereof, including the fixing, charging and collecting of rentals and other rates, fees and charges for the use of the projects.

§20. Bonds and notes are legal investments.

Bonds and notes issued under this article are hereby made securities in which all public officers and public agencies of the State and its political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all personal representatives, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

§21. Bonds or notes not to be deemed State or local debt. Bonds or notes issued under the provisions of this article shall not be deemed to constitute a debt or a pledge of the faith and credit of the State or of any political subdivision thereof. All such bonds or notes shall contain on the face thereof a statement to the effect that neither the Service nor the State nor any political subdivision thereof shall be obligated to pay the same or the interest thereon except from revenues or other moneys of the Service available therefor and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest of such bonds or notes.

§22. (omitted).

§23. (omitted).

§24. (omitted).

§25. Rules and regulations generally.

(a) Authority to adopt, enforce, etc. -- Except as otherwise provided by this article, and subject to the provisions of Article 41, §235(b) of this Code, the Service is hereby authorized to adopt, formulate, and revise from time to time, and enforce rules and regulations necessary for the regulation of its internal affairs and for the use and operation of its projects, and of any other laws the administration of which is vested in the Service; provided, however, that no such rule or regulation concerning the use or operation of a project shall be in conflict with any rule or regulation of the State Department of Health. The Service may limit or regulate water supply or liquid waste service, refuse collection and disposal service, and storm and surface water drainage service, on a temporary basis in any area or to any premise served by Service projects, as the exigencies of the occasion and the protection of its systems require. The Service shall make such regulations consistent with law as it may deem necessary for the public safety, health, comfort or convenience, in the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of its water supply, waste water purification and solid waste disposal projects.

§26. (omitted).

§27. (omitted).

§28. Construction of article -- Generally.

This article shall constitute full and complete authority, without regard to the provisions of any other law for the doing of the acts and things herein authorized, and shall be liberally construed to effect the purposes hereof; provided, however, that nothing herein contained shall be taken as restricting any control which the Department of Health and Mental Hygiene and the Department of Natural Resources, or any of the departments or agencies included therein, are empowered to exercise over any water supply, waste water purification or solid waste disposal project authorized by this article except as provided for in §12(e) of this article. Provided further that nothing herein contained shall be taken as authority or power to interfere with, restrict or otherwise affect the operation of existing waste water purification, water supply or solid waste disposal projects found by the Secretary of Health and Mental Hygiene to be adequately and lawfully operated by municipalities having jurisdiction or responsibility for them, except by their express consent and agreement.

§§29 et seq. (omitted).

Source: Maryland; Md. Ann. Code art. 33B(Supp. 1972).

2. New York State Environmental Facilities Act.

TITLE 12 -- NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

(Selected Provisions)

1282. New York state environmental facilities corporation.

1283. Purposes of the corporation.

1284. General powers of the corporation.

(Intervening sections omitted.)

1290. Notes and bonds of the corporation.

(Balance of sections omitted.)

§1282. New York state environmental facilities corporation.

1. The "New York state pure waters authority" is hereby reconstituted and continued as the "New York state environmental facilities corporation." Reference in any provision of law, general, special or local, or in any rule, regulation or public document to the New York state pure waters authority shall be deemed to be and construed as a reference to the corporation continued by this section. The corporation shall be a body corporate and politic constituting a public benefit corporation. Its membership shall consist of seven directors: the commissioner of environmental conservation who shall be chairman of the corporation, the commissioner of health, the commissioner of the office for local government, and four directors appointed by the governor by and with the advice and consent of the senate.

§1283. Purposes of the corporation.

1. The purposes of the corporation shall be the planning,

financing, construction, maintenance and operation of sewage treatment works, sewage collecting systems, air pollution control facilities, water management facilities, storm water collecting systems and solid waste disposal facilities, the construction on behalf of municipalities and state agencies of sewage treatment works, sewage collecting systems, air pollution control facilities, water management facilities, storm water collecting systems and solid waste disposal facilities and the assistance of municipalities, state agencies, the state and persons in the planning, financing, construction, maintenance and operation of sewage treatment works, sewage collecting systems air pollution control facilities, water management facilities, storm water collecting systems and solid waste disposal facilities, in accordance with the provisions of this title.

§1284. General powers of the corporation.

Except as otherwise limited by this title, the corporation shall have power:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;

4. To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the corporation, in obligations of the state or the United States of America, in obligations the principal and interest of which are guaranteed by the state or the United States of America, or in deposits with such banks or trust companies as may be designated by the corporation. Each such bank or trust company deposit shall be continuously and fully secured by direct obligations of the state or the United States of America, of a market value equal at all times to the amount of the deposit, and all banks and trust companies are hereby authorized to give such security;

5. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;

6. To enter into contracts and leases and to execute all

instruments necessary or convenient or desirable for the purposes of the corporation or to carry out any powers expressly given it in this title;

7. To acquire, purchase, hold, lease as lessee, dispose of and use any real or personal property or any interest therein necessary, convenient or desirable to carry out the purpose of this title and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time required by it in the exercise of its powers;

8. To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties and compensation and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

9. To make plans, surveys and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the corporation and to prepare recommendations in regard thereto, provided that such plans, surveys, studies and recommendations shall be in conformity with any comprehensive studies and reports on the collection, treatment and disposal of sewage conducted and approved pursuant to the provisions of section 1263a of the public health law, on the collection, treatment and disposal of refuse conducted and approved pursuant to the provisions of title IX of the public health law, and on public water supply systems conducted and approved pursuant to the provisions of part V-A of Article V of the conservation law and on the control and abatement of air pollution conducted and approved pursuant to the provisions of title II, article 12A of the public health law;

10. To enter upon such lands, waters, or premises as in the judgment of the corporation may be necessary, convenient or desirable for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this title, the corporation being liable for actual damage done;

11. To conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof to have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the corporation shall fail or refuse to aid or assist the corporation in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the corporation is authorized to apply

for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;

12. To acquire municipal bonds and notes of certain state agencies, and to make loan commitments and loans to municipalities and certain state agencies, and to enter into option arrangements with municipalities for the purchase of municipal bonds and notes;

13. To sell any municipal bonds or notes, other securities, or other personal property acquired by the corporation whenever it is determined by the corporation that the sale of such property is desirable; municipal bonds and notes acquired by the corporation shall be sold by the corporation only at public sale at such price or prices as it shall determine, and a notice of such sale shall be published at least once at least five days prior to the date of such sale in a financial newspaper or journal published in the City of New York; the proceeds of the sale by the corporation of any municipal bonds or notes shall be required to be held for the benefit of the bonds and notes and interest thereon entitled to be paid therefrom, or shall be used to purchase, or applied towards the redemption of bonds or notes, at not more than the redemption price then applicable, plus accrued interest to the next payment date thereon, or, if not then redeemable, at a premium of not more than the redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption, plus accrued interest to said date, all subject to such agreements with bondholders or noteholders as may then exist;

14. To accept any gifts or grants or loans of funds or property from the federal government or from the state or from any other federal or state public body or political subdivision or any other person and to comply, subject to the provisions of this title, with the terms and conditions thereof;

15. To appoint such advisory committees as may be necessary, convenient or desirable to the effectuation of the purposes and powers of the corporation; and

16. To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

§1290. Notes and bonds of the corporation.

1. (a) The corporation shall have power and is hereby authorized from time to time to issue its negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount, as, in the opinion of the corporation, shall be necessary to provide sufficient funds for achieving its purposes, including the acquisition and construction, operation and maintenance of sewage treatment works, sewage collecting systems, solid waste disposal facilities, storm water collecting systems, water management facilities, air pollution control facilities and any other project or projects authorized pursuant to the provisions of this title, and paying the cost thereof, the purchase of notes, and bonds and notes of a state agency, the payment of the cost of any project, the payment of interest on bonds and notes of the corporation, the establishment of reserves to secure such bonds and notes, the provision of working capital and all other expenditures of the corporation incident to and necessary or convenient to carry out its purposes and powers:

(b) The corporation shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding, and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded;

(c) Except as may otherwise be expressly provided by the corporation, every issue of its notes or bonds shall be general obligations of the corporation payable out of any revenues or monies of the corporation, subject only to any agreements with the holders of particular notes or bonds pledging any particular notes or bonds particular receipts or revenues;

2. The notes and bonds shall be authorized by resolution of the directors of the corporation, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding 40 years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner,

be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the corporation may be sold by the corporation, at public or private sale, at such price or prices as the corporation shall determine. No notes or bonds of the corporation may be sold by the corporation at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

3. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) pledging all or any part of the rentals, rates, charges and other fees made or received by the corporation and other monies received or to be received from the ownership or operation or otherwise in connection with any project or projects and all or any part of the monies received in payment of principal or interest on bonds or notes of any state agency and municipal bonds or notes acquired by the corporation, to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(b) pledging all or any part of the assets of the corporation including municipal bonds and notes acquired by the corporation, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(c) the use and disposition of rentals, rates, charges and other fees made or received by the corporation;

(d) the setting aside of reserves or sinking funds and the regulation and disposition thereof from the ownership or operation or otherwise in connection with any project or projects and of the gross income from municipal bonds and notes and bonds and notes of any state agency owned by the corporation;

(e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(f) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;

(g) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) limitations on the amount of monies to be expended by the corporation for operating, administrative or other expenses of the corporation;

(i) vesting in a trustee or trustees such property, rights, powers and duties in trust as the corporation may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this title, and limiting or abrogating the right of the bondholders pursuant to this title, and limiting or abrogating the right of the bondholders to appoint a trustee under this article or limiting the rights, powers and duties of such trustee;

(j) any of the matters, of like or different character, which in any way affect the security or protection of the notes and bonds.

4. In addition to the powers herein conferred upon the corporation to secure its notes and bonds, the corporation shall have power in connection with the issuance of notes and bonds to enter into such agreements as the corporation may deem necessary, convenient or desirable concerning the use or disposition of its monies or property including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such monies or property and the doing of any act (including refraining from doing any act) which the corporation would have the right to do in the absence of such agreements. The corporation shall have power to enter into amendments of any such agreements within the powers granted to the corporation by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the notes and bonds of the corporation.

5. It is the intention hereof that any pledge, mortgage or security instrument made by the corporation shall be valid and binding from the time when the pledge, mortgage or security instrument is made; that the monies or property so pledged, mortgaged and entrusted and thereafter received by the corporation

shall immediately be subject to the lien of such pledge, mortgage or security instrument without any physical delivery thereof or further act; and that the lien of any such pledge, mortgage or security instrument shall be valid and binding as against all parties having claims of any kind in tort, contract of otherwise against the corporation, irrespective of whether such parties have notice thereof. Neither the resolution nor any mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need to be recorded or filed and the corporation shall not be required to comply with any of the provisions of the uniform commercial code.

6. Neither the directors of the corporation nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

7. The corporation, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the corporation, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

8. Neither the state nor any municipality shall be liable on notes or bonds of the corporation and such notes and bonds shall not be a debt of the state or any municipality, and such notes and bonds shall contain on the face thereof a statement to such effect.

> Source: New York; N.Y. Public Authorities Law §§1282-1296 (Supp. 1972).

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

As noted in the Format to State Reports (Paragraph 2.5, Appendix B), very few states have legislation expressly granting to a waste treatment management agency authority to assure that each participating community pay its proportionate share of treatment costs. The following suggested legislation encompasses situations in which the agency is one of the communities and is serving other communities and in which the agency is a separate entity (not one of the communities being served) serving two or more communities. The interlocal agreement statutes set forth in part 2.8 are particularly pertinent to situations involving agreements between and among local units of government.

A. APPORTIONMENT OF COSTS AMONG COMMUNITIES PROVISION. Purpose: Authorize one community operating a treatment works to contract with one or more other communities to furnish them treatment services.

Community apportionment provision:

"A Community [municipality] may contract with one or more other communities to furnish such other communities waste treatment services at such rates and for such charges to which the participating communities may agree; provided, however, that such rates and charges assessed such communities being served shall represent the proportionate cost of treatment attributed to treating the wastes of each participating community including the community furnishing the services."

Source: Suggested by authors.

Note: See also Interlocal Contracts and Agreements (Part 2.8).

B. PROVISION FOR PROPORTIONATE RATES FOR COMMUNITIES WHICH JOINTLY OWN AND OPERATE TREATMENT WORKS.

Purpose: Allow communities to apportion costs when they join together for a common treatment facility.

Proportionate costs for a common facility provision:

"The legislative body of any such governmental agency or municipality or the respective legislative bodies of such governmental agencies and municipalities, who may have agreed to jointly own and operate intercepting sewers or sewage treatment plants, may create a separate board or may designate certain officials of the governmental agencies or municipalities, to have the supervision and control of such intercepting sewers or sewage and garbage disposal plants. The legislative body, respective legislative bodies, or such board may make all necessary rules and regulations governing the use, operation, and control thereof. The legislative body or respective legislative bodies may establish just and equitable rates or charges to be paid to them for the use of such disposal plant and system by each person, firm or corporation whose premises are served thereby, and such rates or charges may be certified to the tax assessor and assessed against the premises served, and collected or returned in the same manner as other county or municipal taxes are certified, assessed, collected and returned."

Source: Michigan; Mich. Comp. Laws Ann. §123.243(1967).

Note: See also Interlocal Contracting and Joint Enterprises in Part 2.8.

C. PROVISION FOR A SEPARATE AGENCY TO SERVE SEVERAL COMMUNITIES.

Purpose: Allow an agency, not one of the participating communities, to serve two or more communities.

Service by separate agency provision:

"The cost of treatment shall be allocated in proper proportion to each city [municipality, community, etc.] within the jurisdiction of, and being served by, the [agency], upon the basis of the total annual volume of sewage contributed by each city as the same shall be measured or estimated and each such city shall pay such share of the total cost thereof as the volume pay such share of the total cost thereof as the volume of sewage contributed by the city and the territory served by such city under contract or otherwise bears to the total volume of sewage. In such estimate of the costs to be borne by each city, there shall be taken into account not only the sewage and wastes of each such city that are intercepted and treated, but an estimate shall be made of the sewage wastes of each city which enter or are discharged directly or indirectly into any stream or watercourse flowing through or adjacent to such district or any part thereof and such untreated sewage and wastes shall be considered as contributed by such city."

Source: Adapted from Minnesota; Minn. Stat. Ann. §445.17 (1)(Supp. 1972).

D. DEFINITION OF "COST OF TREATMENT."

Purpose: Define "cost of treatment" in light of provisions for proportionate sharing of costs by communities.

Definition of "cost of treatment:"

"In determining a participating community's proportionate share of cost of treatment, such proportionate share shall reflect the differences in cost of treatment as among all participating communities including, but not limited to, differences based on (i) the different types of service furnished users in each participating community, (ii) the location of each participating community and the various users within each community, (iii) the cost of maintenance operation repair and replacement of the various components of the system necessary to serve each community, (iv) the quantity and characteristics of the waste delivered for treatment and the time of delivery by each community, and (v) and any other matters which present a reasonable basis for apportioning costs of treatment among participating communities."

Source: Suggested by authors.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

As noted in the Format to State Reports (Paragraph 2.6, Appendix B), the required authority to refuse to receive municipal wastes poses somewhat unusual legal problems. If a treatment management agency is servicing a municipality by treating its wastes, can it "cut-off" the service if the municipality does not comply with an approved areawide plan? It is doubtful that such agency could or would do this on a municipality-wide scale since residential users and public users (schools, hospitals, etc.) would be affected. A somewhat more restricted and practical application of this authority to refuse to receive wastes is (i) that it apply prospectively to deny new or additional "hook-up" with the system (the effect of which would be to prevent further development and growth of a community or subdivision until compliance is had with the areawide plan) and (ii) that such authority include lesser sanctions such as penalties, surcharges and similar charges. A third possibility is the authority of the treatment agency to cut-off particular users within the municipality if the municipality's failure to comply is based on that particular user's or category of users' effluent. (See suggested legislation in Part 2.9 for legislation authorizing a "take-over" of the water quality management of noncomplying community by the state or areawide agency.)

The legislation suggested below provides the management agency with a broad range of regulatory controls and with sanctions which it may invoke for violations of rules and regulations including provisions of the areawide plan. While most agencies currently possess some sanctions which they may invoke for violations of their ordinances, rules or regulations, these generally apply only to individual dischargers rather than to entire communities. Section 7 of the following suggested legislation remedies this problem by giving the agency a civil sanction which can be applied to municipal corporations. Of course, where the noncomplying community is not a corporate body a monetary penalty could not be assessed. Section 4 of the following suggested legislation deals with the problem of denying new or additional hook-ups, it authorizes the agency to refuse to connect such communities or users within such communities to its system where the communities fail to comply with any provisions of the areawide waste treatment management plan.

A. WASTEWATER CONTROL PROVISION.

Purpose: To empower waste treatment management agencies to apply monetary sanctions to communities failing to comply with the areawide waste treatment management plan and to refuse to connect such communities to its system.

Wastewater control provision:

Section 1. Supervision and Regulation of Sewage Disposal

The [agency] shall supervise and regulate water quality control and sewage disposal within its jurisdiction, including the fixing of standards, contracts, issuance of licenses or permits, practices and schedules for, or in connection with, water quality control and sewage disposal functions of such [agency].

Section 2. Regulations; Authority of [Agency].

Without limiting in any way the provisions of this division, and in addition to the powers granted therein, the [agency] may make and enforce such regulations for the control of quantity, quality and flow of wastewater within the boundaries of the [agency] as are not in conflict with the general laws of the state. "Wastewater" shall include all sewage, industrial and other wastes and waters, whether treated or untreated, discharge/into or permitted to enter a community sewer system connected directly or indirectly to, the [agency] interceptor for treatment in sewage disposal facilities of the [agency].

Section 3. Scope and Content of Rules and Regulations.

Rules and regulations pertaining to the control of quantity, quality or flow of wastewater may provide for any or all of

(a) Periodic technical reports to the [agency] from contributors or dischargers into the [agency] system.

(b) The issuance of permits or licenses by the [agency] as a condition of discharging wastewater for treatment in sewage disposal facilities of the [agency].

(c) The installation by the contributor or discharger of wastewater sampling and inspection facilities.

(d) Procedures for enforcement of wastewater standards and regulations adopted by the [agency] and remedies for violation thereof, including assessment of surcharges and penalties.

(e) The installation by the contributor or discharger or pretreatment works or facilities.

(f) Entry by the [agency] upon private property to make surveys, inspections or samplings.

(g) Provision for protection of industrial or commercial secrets of contributors or dischargers subject to reporting or inspection or both.

(h) Refusal to accept into the sewage disposal facilities of the [agency] wastewater which does not meet appropriate pretreatment standards of the [agency].

(i) Such other provisions as are necessary to effectuate the control of the quantity, quality and flow of wastewater within the [agency].

Section 4. Control of connections by [agency].

Where any incorporated or unincorporated community fails to conform with any provision of an areawide waste treatment management plan in effect for the area in which such community is located, the [agency] shall have the power to regulate, limit, terminate, deny or otherwise control connections of that community's sewer system with the sewage disposal facilities of the [agency].

Section 5. Nuisance.

No person or community shall discharge wastewater into a community sewer system connected to or directly into the [agency] interceptor which will result in contamination, pollution or a nuisance. All discharges of wastewater which are, or could be, harmful to or unreasonably affect the sewage disposal facilities of the [agency], or which impair or unreasonably affect the operation and maintenance of such facilities, or which violate quantity, quality and flow standards adopted by the [agency], and all wastewater discharges which unreasonably affect, or could unreasonably affect, the quality of the [agency's] treatment plant effluent in such a manner that receiving water quality requirements established by law cannot be met by the [agency] shall constitute a nuisance for the purposes of this act.

Section 6. Injunction.

Whenever a discharge of wastewater by a person or community is in violation of the [agency's] regulations or otherwise causes or threatens to cause a condition of contamination, pollution or nuisance, as defined in this act, the [agency] may petition the [district court] for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the continuance of such discharge. In any civil action brought under this section, it shall not be necessary to allege or prove at any stage of thy proceedings that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

Section 7. Civil Liability, Enforcement.

(a) Any person, or municipal corporation who intentionally or negligently violates any order issued by the [agency] for violation of rules regulating or prohibiting discharge of wastewater which causes or threatens to cause a condition of contamination, pollution or nuisance, as defined in this act, may be liable civilly in a sum not to exceed [ ] for each day in which such violation occurs.

(b) The [agency] shall petition the [district court] to impose, assess and recover such sums. In determining such amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, attempted or taken by the discharger.

Section 8. Misdemeanor.

Any person who intentionally discharges wastewater in any manner, in violation of any order issued by the [agency], which results in contamination, pollution or a nuisance, as defined in this act, is guilty of a misdemeanor.

Section 9. Abatement Actions; Parties Defendant.

Any abatement action taken pursuant to the foregoing sections with respect to contamination, pollution or nuisance, as defined in this act, created by the discharge of wastewater into the [agency's] sewer system shall be taken against the agent or agency operating such community's system and the contributor or contributors whose waste creates the contamination, pollution or nuisance.

Section 10. Entry Upon Private Property; Inspections.

The [agency] may enter upon private property of any person and sample it, inspect or survey the wastewater sampling installation or pretreatment facilities or processes or any contributor or discharger to ascertain whether [agency] regulations for control of quantity, quality and flow of wastewater are being complied with. Such inspection shall be made with the consent of the owner or possessor of such facilities or, if such consent is refused, with a warrant duly issued pursuant to [appropriate state law]. However, in the event of an emergency affecting the public health or safety, such inspection may be made without the consent or the issuance of a warrant. The [agency] may terminate or cause to be terminated sewage disposal services to such property if a violation of any rule or regulation pertaining to control of wastewater is found to exist or if a discharge of wastewater causes or threatens to cause a condition of contamination, pollution or nuisance as defined in this act.

> Sources: Section 4 was adapted from an Illinois statute; Ill. Ann. Stat. 42 §306.2(Supp. 1972). The remainder of the model was adapted with some revisions, from a California statute; California Public Utilities Code, §§13570 through 13578(Supp. 1972).

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

It is deemed that the purpose, among others, of this provision of the Act is to encourage industry to use the services of the treatment management agency with the overall economies of scale which may result. Most agencies have authority, either express or implied, to accept industrial wastes for treatment.

If a treatment agency has the authority to accept for treatment industrial wastes, it should also have the authority (i) to set the criteria for acceptance of such wastes in order to protect its treatment works and, (ii) if such criteria are not met, to refuse to accept such industrial wastes for treatment. Pursuant to §208(b)(2)(C) (iii) of the Act, the areawide waste treatment management plan must establish a regulatory program to assure that any industrial wastes discharged into a treatment works meet applicable pretreatment requirements. Thus, a treatment management agency should have the right to refuse any effluent which in its judgment damage its treatment works and thus endanger water quality. The following suggested legislation responds to this problem.

A. PROVISION FOR SUPERVISION AND REGULATION OF SEWAGE DISPOSAL (INCLUDING INDUSTRIAL WASTES).

Purpose: To authorize treatment agencies to require pretreatment of industrial wastes and to refuse to accept industrial wastes which do not meet pretreatment standards.

Supervision and regulation provision:

Section 1. Regulations: Authority of [Governing Body]

In addition to the rights, powers, and authority granted by any other act, the [governing body] of any [agency] may make and enforce such regulations for the control of quantity, quality and flow of waste water within the boundaries of the [agency] as are not in conflict with the general laws of the state. "Waste water" shall include all sewage, industrial and other wastes and waters, whether treated or untreated, discharged into or permitted to enter a community sewer system connected to or directly discharging into the [agency] interceptor for treatment in sewage disposal facilities of the [agency].

Section 2: Scope and Content of Rules and Regulations

Rules and regulations pertaining to the control of quality, quantity or flow of waste water may provide for any or all of the following:

(a) Periodic technical reports to the [agency] from contributors or dischargers into the [agency] system.

(b) The issuance of permits or licenses by the [agency] as a condition of discharging wastewater for treatment in sewage disposal facilities of the [agency].

(c) The installation by the contributor or discharger of wastewater sampling and inspection facilities.

(d) Procedures for enforcement of wastewater standards and regulations adopted by the [agency] and remedies for violations thereof, including assessment of surcharges and penalties.

(e) The installation by the contributor or discharger of pretreatment works or facilities.

(f) Entry by the [agency] upon private property to make surveys, inspections or samplings.

(g) Provision for protection of industrial or commercial secrets of contributors or dischargers subject to reporting or inspection regulations or both on application of such contributors or dischargers.

(h) Refusal to accept into the sewage disposal facilities of the [agency] wastewater which does not meet appropriate standards of the [agency].

(i) Such other provisions as are necessary to effectuate the control of the quantity, quality and flow of wastewater within the [agency].

Source: This model was adapted from §§13571 and 13572 of the California Public Utilities Code (Supp. 1972). Other provisions of this Code are set forth in Part 2.6 of this appendix.

B. PROVISION AUTHORIZING ACCEPTANCE OF INDUSTRIAL WASTES.

Purpose: To authorize acceptance for treatment of industrial wastes provided that compliance is had with pretreatment standards and the treatment works operation will not be adversely affected.

Acceptance of industrial wastes provision:

"The [agency] in operation of its treatment works shall have the authority to accept for treatment industrial wastes provided (i) that such industrial wastes are pretreated in accordance with pretreatment standards established by the [agency] and (ii) that such industrial wasets are susceptible to treatment by such treatment works and will not adversely affect its operation."

Source: Suggested by authors.

2.8 Interlocal Cooperation Among Agencies

Though numerous forms of local governmental organizations exist which have the legal capability to deal with water quality control within or closely adjacent to their territorial jurisdictions, most cannot deal with areawide problems without the cooperation of other units of local government. Grant eligibility of local units of government will in many cases depend on their capability to act cooperatively to solve water quality problems of areawide scope. With respect to the requirements of §208 (c)(2) of the Act, such capability will be specifically required in order to insure that each community receiving services from a grant funded multi-community facility will, among other things, pay its proportionate share of the cost of such services. More broadly, however, where areawide plans call for construction and operation of facilities jointly by a number of communities, formal interlocal cooperation will be required to create the legal structures for undertaking and administering such projects. Two useful mechanisms exist for legally structuring such cooperation -- interlocal contracts and agreements, and metropolitan special districts.

2.8.1 Interlocal Contracts and Agreements

Interlocal contracts and agreements offer the most rudimentary, flexible and popular means of achieving integration of services across local, state, and even national boundaries. Though all such arrangements constitute contracts of one form or another, the discussion herein and the following legislative models follow the normal practice of referring to contracts for joint exercises of their powers by contracting parties as "agreements," and to contracts whereby one party "sells" services to another as "contracts." Statutes authorizing such contracts and agreements may be either specific, applying to a specific governmental function, or general, applying to a broad range of delegable governmental functions. General statutes authorizing interlocal cooperation exist, in one form or another, in a large majority of the states.

Interlocal contracts and agreements offer a number of benefits to local governments. Services available through their use are generally more varied than those which can be provided by special districts, and may include some which smaller communities are not otherwise authorized to provide for themselves. They provide local governments with a means of controlling development in areas outside their boundaries, and possess a high degree of political feasibility as they generally do not require voter approval and do not alter the structure or functional responsibilities of the local governments involved.

The formula agreed upon by the parties regarding the obligations of each to pay for services will, except in extreme cases, be acceptable as representing each party's proportionate share of treatment costs as required by §208(c)(2)(G). With respect to use of interlocal contracts and agreements to organize construction of grant eligible facilities, their most serious defect lies in their voluntary nature (though it should be kept in mind in this context that acceptance of grants is itself voluntary). As a result of this characteristic, where local motives and interest oppose areawide interest, local interests will normally prevail.

The three legislative models set out below illustrate some of the various kinds of interlocal cooperation statutes which the agencies or political subdivisions can use.

A. INTERLOCAL COOPERATION AND JOINT ENTERPRISES.

Purpose: To allow local governments to cooperate in order to make the most efficient and advantageous use of their powers.

The optional language in brackets on lines three and four of Section 4 would restrict agreements to parties which are authorized to carry out the jointly exercised function individually. Prior to adoption of Section 8, Interlocal Contracts, study should be made of existing state law governing contracts by local governments to determine whether the provision should be enlarged to require filing and to require additional (state) approval of such contracts.

Interlocal cooperation and joint enterprises provision:

Section 1. Purpose.

It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Section 2. Short Title.

This act may be cited as the Interlocal Cooperation Act.

Section 3. Definitions.

For the purposes of this Act:

(1) The term "public agency" shall mean any political subdivision [insert enumeration, if desired] of this state; any agency of the state government or of the United States; and any political subdivision of another state.

(2) The term "state" shall mean a state of the United States and the District of Columbia.

Section 4. Interlocal Agreements

(a) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state [having the power or powers, privilege or authority], and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

(b) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

(1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items 1, 3, 4, 5, and 6 enumerated in subdivision (c) hereof, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal administrative entity created by an agreement made hereunder, said performances may be offered in satisfaction of the obligation or responsibility.

(f) Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within [   ] days of its submission shall constitute approval thereof.

[(g) Financing of joint projects by agreement shall be as provided by law.]

Section 5. Filing, Status, and Actions.

Prior to its entry into force, an agreement made pursuant to this act shall be filed with [the keeper of local public records] and with the [secretary of state]. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure or performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

Section 6. Additional Approval in Certain Cases

In the event that an agreement made pursuant to this act shall deal in whole or in part with the provision of services of facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to Section 4(f) of this act. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.

Section 7. Appropriations, Furnishing of Property, Personnal and Service.

Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

Section 8. Interlocal Contracts.

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which [[each public agency] or [any of the public agencies]] entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Section 9. Separability.
[Insert separability clause.]

Section 10. Effective Date.
[Insert effective date.]

Source: Advisory Commission on Intergovernmental Relations, 1967 State Legislative program of the Advisory Commission on Intergovernmental Relations, Washington, D. C.: October 1966, pp. 477-483. This model act was adapted, with certain revisions from Council of State Governments, Suggested State Legislation -- Program for 1957, Chicago, Illinois: Council of State Governments, October 1956, pp. 93-97.

B. INTERLOCAL COOPERATION ACT.

Purpose: To allow local governments to cooperate in order to make the most efficient and advantageous use of their powers and for this purpose to create an effective separate entity for management of their joint ventures.

The primary difference between this act and the one preceeding lies in its more detailed description of the entity created to operate the joint undertaking [See Section 6]. These provisions, modeled primarily upon California and Iowa legislation, envision the creation of an entity which could be grant eligible in its own name. The wording employed by the act would permit inclusiion in the agreement of units of local government which otherwise would not be authorized to provide the jointly exercised function for themselves. Another new provision of the act is one which provides for the creation of a joint planning agency for carrying out planning functions under federal law [See Section 6(c)]. As with the preceeding model, prior to adoption of Section 10, Interlocal Contracts, study should be made of existing state law governing contracts by local governments to determine whether the provision should be enlarged to require filing and to require additional (state) approval of such contracts.

Interlocal cooperation act:

Section 1. Purpose.

It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Section 2. Short Title.

This act may be cited as the Interlocal Cooperation Act.

Section 3. Public Agency Definition.

For the purposes of this act, the term "public agency" shall mean any political subdivision [insert enumeration, if desired] of this state; any agency of the state government or of the United States; and any political subdivision of another state. [If appropriate, add: The term "state" shall mean a state of the United States and the District of Columbia.]

Section 4. Interlocal Agreements.

If authorized by their governing bodies, two or more public agencies by agreement may jointly exercise any or all functions that a party to the agreement, its officers or agencies, have authority to perform, even though one or more of the contracting agencies may be located outside this state.

Section 5. Contents of Agreement.

(a) Any such agreement shall specify the following:

(1) Its duration, which may be perpetual.

(2) The precise organization, composition and nature of any administrative board or separate public entity created thereby together with the powers delegated thereto.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(b) In the event that the agreement does not by its terms establish a separate public entity or designate one or more of the parties to conduct the joint or cooperative undertaking, the agreement shall, in addition to items 1, 3, 4, 5, and 6 enumerated in subdivision (a) hereof, contain the following:

(1) Provision for or designation of a firm, corporation, administrator, or joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(c) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

(d) Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within [   ] days of its submission shall constitute approval thereof.

Section 6. Administrative Entity.

(a) The entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement, an administrator or joint board, a firm or corporation, or a separate public entity designated in the agreement. One or more of the parties may agree to provide all or a portion of the services to the other parties in the manner provided in the agreement. The parties may provide for the mutual exchange of services without payment of any consideration other than such services.

(b) If the agreement designates a separate public entity to administer or execute the agreement, such entity shall have power and is hereby authorized:

> (1) To construct, repair, improve, expand, and maintain, directly or by contract, acquire and operate a project or projects necessary to carry out the purposes of such agreement;
>
> (2) To issue from time to time revenue bonds payable from the revenues derived from such project or projects, or any combination of such projects, to finance the cost or part of the cost of the acquisition, construction, reconstruction, repair, extension or improvement of such project or projects, including the acquisition for the purposes of such agreement, of any property, real or personal or mixed therefor. The power of the entity to issue revenue bonds shall not be exercised until authorized by resolution or ordinance duly adopted by parties to the agreement. Parties to the agreement may not withdraw or in any way terminate, amend, or modify in any manner to the detriment of the bondholders said agreement if revenue bonds or obligations issued in anticipation of revenue bonds have been issued and are then outstanding unpaid. [The terms and manner of issuing revenue bonds shall be as provided by state law.]

(3) To apply for and accept from any federal agency or any other source grants or other funds for or in aid of the acquisition, construction, reconstruction, repair, extension or improvement of a project or projects necessary to carry out the purposes of such agreement and to subscribe to and comply with any rules and regulations made by any federal agency with regard to any grants or loans, or both, from any federal agency.

(c) A [enumerate planning commission, council of governments or similar organizations to which applicable] created under the provisions of this act shall, upon designation as such by the governor, serve as a [enumerate district, regional or metropolitan as applicable] agency for comprehensive planning for its area for the purpose of carrying out the functions as defined for such agency by federal, state and local laws and regulations.

(d) A power granted by agreement or this act to the administrator, joint board, firm, corporation, or separate public entity designated to administer or execute the agreement is subject to the restrictions upon the manner of exercising such power of one of the contracting parties, which party shall be designated by the agreement.

Section 7. Filing, Status, and Actions.

Prior to its entry into force, an agreement made pursuant to this act shall be filed with [the keeper of local public records] and with the [secretary of state]. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

Section 8. Additional Approval in Certain Cases.

In the event that an agreement made pursuant to this act shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control, and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to Section 5(d) of this act. The requirement of submission and approval shall be in addition to and not in substitution for requirement of submission to and approval by the attorney general.

Section 9. Appropriations, Furnishing of Property, Personnel and Service.

Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give or otherwise supply the party designated or entity created to operate the joint or cooperative undertaking by providing such personnel or services thereof as may be within its legal power to furnish.

Section 10. Interlocal Contracts.

Any one or more public agenciees may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which [[each public agency] or [any of the public agencies]] entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Section 11. Separability.

[Insert effective clause.]

Section 12. Effective Date.

[Insert effective date.]

Sources: Sections 1 through 5, and 7 through 12 were taken, with minor modifications, from the model act of the Advisory Commission on Intergovernmental Relations. Sections 6(a) and 6(d) were taken from the California Joint Exercise of Powers Act, California Government

Code §§6506 and 6508. Sections 6(b)(1), 6(b)(2), and 6(c) were taken with some modifications from the Iowa Interlocal Cooperation Act, I. C. A. §28E.15, and the Iowa Joint Financing of Public Works and Facilities Act, I. C. A. §28E.3. Section 6(b)(3) was substantially adapted from the Washington Emergency Public Works Act, RCWA §39.28.020.

C. INTERLOCAL CONTRACTS AND AGREEMENTS FOR WASTE TREATMENT ONLY.

Purpose: To allow local governments to cooperate in order to make the most efficient and advantageous use of their waste treatment powers.

Unlike the two preceeding statutes, the model below is designed to authorize cooperation only for the specific purpose of waste treatment (water quality control). As the operating agency under this act will be one of the contracting parties, grant eligibility of the joint undertaking will depend directly on that of the operating agency. By changing the words "sewers and sewage disposal facilities" to "waste treatment works," the scope of the area of cooperation is broadened to include more than the conventional sewage treatment system.

Provision for interlocal waste treatment contracts:

"Any [enumerate local agencies to which applicable] owning or operating its own sewers and sewage disposal facilities, wherever topographic conditions shall make it feasible and wherever such existing system shall be adequate therefor in view of the requirements of the [local agencies], served or to be served by such system, may contract with any other [local agencies] for the discharge into its sewer system of sewage from all or any part or parts of such other [local agencies] upon such terms and conditions and for such periods of time as may be deemed reasonable. Any [local agencies] may contract with any other [local agencies] for the construction or operation or both of any sewer or sewage disposal facilities for the joint use and benefit of the contracting parties upon such terms and conditions and for such period of time as the governing bodies of the contracting parties may determine. Any such contract may provide that the responsibility for the management of the construction or maintenance or both and operation of any sewage disposal facilities or part thereof covered by such contract shall be vested solely in one of the contracting parties, with the other party or parties thereto paying to the managing party such portion of the expenses thereof as shall be agreed upon."

Source: Washington; Wash. Rev. Code Ann. §35.67.300(1965).

2.8.2 Metropolitan (Multi-Community) Special Districts.

A metropolitan special district is an independent unit of local government organized to perform one or several governmental functions throughout a metropolitan area. Such districts differ from the much more numerous urban special districts which serve only a part, commonly an unincorporated part, of a metropolitan area. Metropolitan special districts may be either limited purpose, performing one or only a few functions, or multi-purpose, performing a variety of functions.

Metropolitan special districts offer a number of advantages in the performance of urban functions. They provide an effective means of dealing with areawide problems such as waste treatment and water quality control. They are politically feasible as they do not seriously threaten existing local governmental structure and may not require approval of the local electorate for their creation.

Offsetting these advantages, at least with respect to limited purpose districts, are a number of disadvantages. Proliferation of limited purpose districts weakens the general purpose local governments. Their single purpose nature leads their governing bodies to ignore the impact of their activities on other governmental functions. Further, as such districts are generally designed to be self-supporting from their service charges, they naturally devote their efforts to revenue producing facilities, even though in a given case a non-revenue producing facility might be more desirable. Finally they are generally less responsive to the populations they serve than are general purpose local governments. These disadvantages are also characteristic of multi-purpose districts except that, to the extent that they have more functional responsibilities, they represent less of a fragmentation of local government. However, their multi-purpose nature decreases their political feasibility as they appear more threatening to the general purpose local governments whose responsibilities they assume.

A. METROPOLITAN SPECIAL DISTRICTS.

The Washington Metropolitan Municipal Corporation Act, set out in highly abridged form below, exemplifies the basic structure and capabilities of multi-purpose metropolitan special districts. The Municipality of Metropolitan Seattle (Seattle Metro.), organized under this statute is discussed at length in Section V of the report, "Problems and Approaches to Areawide Water Quality Management." Corporations organized under this statute may be authorized to perform six more or less related urban functions of sewage disposal, garbage disposal, water supply, public transportation, parks and parkways, and comprehensive planning on a multi-community basis. As indicated in the Washington state report in Appendix B and the specific discussion of the Seattle Metro. is essentially in compliance with the grant requirements contained in §208(c)(2) of the Act. Its difficulties, as with essentially all of the agencies covered by this report, lie in its limited capability to refuse to accept wastes of communities not in compliance with an areawide plan as required by §208(c)(2)(H) of the Act. There is also the lack of clear authority to recover from industrial dischargers the federal portion of the cost of treatment works attributable to the treatment of their wastes as required by §204(b)(1)(B) of the Act. For remedial legislation, see §2.3.2 of this appendix.

Purpose: To provide a cooperative arrangement in populous areas for water quality control and other services.

Multi-community special district provision:

CHAPTER 35.58 -- WASHINGTON METROPOLITAN MUNICIPAL CORPORATIONS ACT 35.58.010 Declaration of policy and purpose. It is hereby declared to be the public policy of the state of Washington to provide for the people of the populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government. The growth of urban population and the movement of people into suburban areas has created problems of sewage and garbage disposal, water supply, transportation, planning, parks and parkways which extend beyond the boundaries of cities, counties and special districts. For reasons of topography, location and movement of population, and land conditions and development, one or more of these problems cannot be adequately met by the individual cities, counties and districts of many metropolitan areas.

It is the purpose of this chapter to enable cities and counties to act jointly to meet these common problems in order that the proper growth and development of the metropolitan areas of the

State may be assured and the health and welfare of the people residing therein may be secured.

35.58.030 Corporations authorized. Any area of the state containing two or more cities, at least one of which is a city of the first class, may organize as a metropolitan municipal corporation for the performance of certain functions, as provided in this chapter.

35.58.040 Territory which must be included or excluded -- Boundaries. At the time of its formation no metropolitan municipal corporation shall include only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of such corporation. If subsequent to the formation of a metropolitan municipal corporation a part only of any city shall be included within the boundaries of a metropolitan municipal corporation such part shall be deemed to be "unincorporated" for the purpose of selecting a member of the metropolitan council pursuant to RCW 35.58.120 (3) and such city shall neither select nor participate in the selection of a member of the metropolitan council pursuant to RCW 35.58.120.

Any metropolitan municipal corporation now existing or hereafter created, within a class A county contiguous to a class AA county, shall, upon May 21, 1971 as to metropolitan corporations existing on such date or upon the date of formation as to metropolitan corporations formed after the effective date of this 1971 amendatory act, have the same boundaries as those of the respective central county of such metropolitan corporation: Provided, That the boundaries of such metropolitan corporation may be enlarged after such date by annexation as provided in chapter 35.58 RCW as now or hereafter amended. Any contiguous metropolitan municipal corporations may be consolidated into a single metropolitan municipal corporation upon such terms, for the purpose of performing such metropolitan function or functions, and to be effective at such time as may be approved by resolutions of the respective metropolitan councils. In the event of such consolidation the component city with the largest population shall be the central city of such consolidated metropolitan municipal corporation and the component county with the largest population shall be the central county of such consolidated metropolitan municipal corporation.

35.58.050 Functions authorized. A metropolitan municipal corporation shall have the power to perform any one or more of the following functions, when authorized in the manner provided in this chapter:

(1) Metropolitan sewage disposal.

(2) Metropolitan water supply.

(3) Metropolitan public transportation.

(4) Metropolitan garbage disposal.

(5) Metropolitan parks and parkways.

(6) Metropolitan comprehensive planning.

35.58.060 Unauthorized functions to be performed under other law. All functions of local government which are not authorized as provided in this chapter to be performed by a metropolitan municipal corporation, shall continue to be performed by the counties, cities and special districts within the metropolitan area as provided by law.

35.58.070 Resolution, petition for election -- Requirements, procedure. A metropolitan municipal corporation may be created by vote of the qualified electors residing in a metropolitan area in the manner provided in this chapter. An election to authorize the creation of a metropolitan municipal corporation may be called pursuant to resolution or petition in the following manner:

(1) A resolution or concurring resolutions calling for such an election may be adopted by either:

(a) The city council of a central city; or

(b) The city councils of two or more component cities other than a central city; or

(c) The board of commissioners of a central county.
A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the board of commissioners of the central county.

35.58.110 Additional functions -- Authorized without election. A metropolitan municipal corporation may be authorized to perform one or more metropolitan functions in addition to those which it previously has been authorized to perform, without an election, in the manner provided in this section. A resolution providing for the performance of such additional metropolitan function or functions shall be adopted by the metropolitan council. A copy of such resolution shall be transmitted by registered mail to the legislative body of each component city and county. If, within 90 days after the date of such mailing, a concurring resolution is adopted by the legislative body of each component county, of each component city of the first class, and of at least two-thirds of all other component cities, and such concurring resolutions are transmitted to the metropolitan council, such council shall by resolution declare that the metropolitan municipal corporation has been authorized to perform such additional metropolitan function or functions. A copy of such resolution shall be transmitted by registered mail to the legislative body of each component city and county and of each special district which will be affected by the particular additional metropolitan function authorized.

35.58.120 Metropolitan council -- Composition -- Chairman. A metropolitan municipal corporation shall be governed by a metropolitan council composed of the following:

(1) One member (a) who shall be the elected county executive of the central county, or (b) if there shall be no elected county executive, one member who shall be selected by, and from, the board of commissioners of the central county;

(2) One additional member for each county commissioner district or county council district which shall contain 15,000 or more persons residing within the metropolitan municipal corporation, who shall be the county commissioner or county councilman from such district;

(3) One additional member selected by the board of commissioners or county council of each component county for each county commissioner district or county council district containing 15,000 or more persons residing in the unincorporated portion of such commissioner district lying within the metropolitan municipal corporation each such appointee to be a resident of such unincorporated portion;

(4) One member from each component city which shall have a population of 15,000 or more persons, who shall be the mayor of such city, if such city shall have the mayor-council form of government, and in other cities shall be selected by, and from, the mayor and city council of each of such cities.

(5) One member representing all component cities which have less than 15,000 population each, to be selected by and from the mayors of such smaller cities in the following manner: The mayors of all such cities shall meet on the second Tuesday following the establishment of a metropolitan municipal corporation and thereafter on the third Tuesday in June of each even-numbered year at 2:00 p.m. at the office of the board of county commissioners of the central county. The chairman of such board shall preside. After nominations are made, successive ballots shall be taken until one candidate receives a majority of all votes cast.

(6) One additional member selected by the city council of each component city containing a population of 15,000 or more for each 50,000 population over and above the first 15,000, such members to be selected from such city council until all councilmen are members and thereafter to be selected from other officers of such city.

(7) For any metropolitan municipal corporation which shall be authorized to perform the function of metropolitan sewage disposal, one additional member who shall be a commissioner of a sewer district which is a component part of the metropolitan municipal corporation and shall participate only in those council actions which relate to the performance of the function of metropolitan sewage disposal. The commissioners of all sewer districts which are component parts of the metropolitan municipal corporation shall meet on the first Tuesday of the month following May 21, 1971 and thereafter on the second Tuesday of June of each even-numbered year at 2:00 p.m. at the office of the board of county commissioners of the central county. After election of a chairman, nominations shall be made to select a member to serve on the metropolitan council and successive ballots taken until one candidate receives a majority of votes cast.

(8) One member, who shall be chairman of the metropolitan council, selected by the other members of the council. He shall not hold any public office of or be an employee of any component city or component county of the metropolitan municipal corporation.

35.58.180 General powers of corporation. In addition to the powers specifically granted by this chapter a metropolitan municipal corporation shall have all powers which are necessary to carry out the purposes of the metropolitan municipal corporation and to perform authorized metropolitan functions. A metropolitan municipal corporation may contract with the United States or any agency thereof, any state or agency thereof, any other metropolitan municipal corporation, any county, city, special district, or governmental agency and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or operation of metropolitan facilities and a metropolitan municipal corporation may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the metropolitan municipal corporation may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties: Provided, That before any contract for the lease or operation of any metropolitan public transportation facilities shall be let to any private person, firm or corporation, competitive bids shall first be called upon such notice, bidder qualifications and bid conditions as the metropolitan council shall determine.

A metropolitan municipal corporation may sue and be sued in its corporate capacity in all courts and in all proceedings.

35.58.200 Powers relative to sewage disposal. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan sewage disposal, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a comprehensive sewage disposal and storm water drainage plan for the metropolitan area.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for sewage disposal and storm water drainage within or without the metropolitan area, including trunk, interceptor and outfall sewers, whether used to carry sanitary waste, storm water, or combined storm and sanitary sewage, lift and pumping stations, sewage treatment plants, together with all lands, properties, equipment and accessories necessary for such facilities. Sewer facilities which are owned by a city or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the city or special districts owning such facilities. Cities and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or district.

(3) To require counties, cities, special districts and other political subdivisions to discharge sewage collected by such entities from any portion of the metropolitan area which can drain by gravity flow into such metropolitan facilities as may be provided to serve such areas when the metropolitan council shall declare by resolution that the health, safety, or welfare of the people within the metropolitan area requires such action.

(4) To fix rates and charges for the use of metropolitan sewage disposal and storm water drainage facilities.

35.58.210 Metropolitan sewer advisory committee. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan sewage disposal, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan sewer advisory committee to be formed by notifying the legislative body of each component city which operates a sewer system to appoint one person to serve on such advisory committee and the board of commissioners of each sewer district, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a sewer district commissioner. The metropolitan sewer advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the sewage disposal function.

35.58.360 Rules and regulations -- Penalties -- Enforcement. A metropolitan municipal corporation shall have power to adopt by resolution such rules and regulations as shall be necessary or proper to enable it to carry out authorized metropolitan functions and may provide penalties for the violation thereof. Actions to impose or enforce such penalties may be brought in the superior court of the state of Washington in and for the central county.

35.58.450 General obligation bonds -- Issuance, sale, form, term, election, payment. Notwithstanding the limitations of chapter 39.36 RCW and any other statutory limitations otherwise applicable and limiting municipal debt, a metropolitan municipal corporation shall have the power to authorize and to issue general obligation bonds and to pledge the full faith and credit of the corporation to the payment thereof, for any authorized capital purpose of the metropolitan municipal corporation: Provided, That a proposition authorizing the issuance of any such bonds to be issued in excess of three-fourths of one percent of the value of the taxable property therein, as the term "value of the taxable property" is defined in RCW 39.36.015, shall have been submitted to the electors of the metropolitan municipal corporation at a special election and assented to by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than 40 percent of the total number of votes cast within the area of said metropolitan municipal corporation at the last preceding state general election. Such general obligation bonds may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of bonds which could then lawfully be issued. Such bonds may be issued in one or more series from time to time out of such authorization but at no time shall the total general indebtedness of the metropolitan municipal corporation exceed five percent of the value of the taxable property therein, as the term "value of the taxable property" is defined in RCW 39.36.015. Both principal of and interest on such general obligation bonds may be made payable from annual tax levies to be made upon all the taxable property within the metropolitan municipal corporation in excess of the 40 mill tax limit or may be made payable from any other taxes or any special assessments which the metropolitan municipal corporation may be authorized to levy or from any otherwise unpledged revenue which may be derived from the ownership or operation of properties or facilities incident to the performance of the authorized function for which such bonds are issued or may be made payable from any combination of the foregoing sources. The metropolitan council may include in the principal amount of such bond issue an amount for engineering, architectural, planning, financial, legal, urban design and other services incident to acquisition or construction solely for authorized capital purposes and may include an amount to establish a guaranty fund for revenue bonds issued solely for capital purposes.

General obligation bonds shall be sold as provided in RCW 39.44.030 and shall mature in not to exceed 40 years from the date of issue. The various annual maturities shall commence not more than five years from the date of issue of the bonds and shall as nearly as practicable be in such amounts as will, together with the interest on all outstanding bonds of such issue, be met by equal annual tax levies.

Such bonds shall be signed by the chairman and attested by the secretary of the metropolitan council, one of which signatures may be a facsimile signature and the seal of the metropolitan corporation shall be impressed or imprinted thereon. Each of the interest coupons shall be signed by the facsimile signatures of said officials. General obligation bonds shall be sold at public sale as provided by law for sale of general obligation bonds of cities of the first class and at a price not less than par and accrued interest.

35.58.460 Revenue bonds -- Issuance, sale, form, term, payment, reserves, actions. A metropolitan municipal corporation may issue revenue bonds to provide funds to carry out its authorized metropolitan sewage disposal, water supply, garbage disposal or transportation purposes, without submitting the matter to the voters of the metropolitan municipal corporation. The metropolitan council shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the metropolitan council may obligate the metropolitan municipal corporation to pay such amounts of the gross revenue of the particular utility constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the metropolitan council shall determine and may obligate the metropolitan municipal corporation to pay such amounts out of otherwise unpledged revenue which may be derived from the ownership, use or operation of properties or facilities owned, used or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes or other sources of payment lawfully authorized for such purpose, as the metropolitan council shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners and holders of such bonds shall have a lien and charge against the gross revenue of such utility or any other revenue, fees, tolls, charges, tariffs, fares, special taxes or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the metropolitan municipal corporation.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest, or may be bearer bonds, shall be in such denominations as the metropolitan council shall deem proper; shall be payable at such time or times and at such places as shall be determined by the metropolitan council; shall bear interest at such rate or rates as shall be determined by the metropolitan council, shall be signed by the chairman and attested by the secretary of the metropolitan council, one of which signatures may be a facsimile signature, and the seal of the metropolitan municipal corporation shall be impressed or imprinted thereon; each of the interest coupons shall be signed by the facsimile signatures of said officials.

Such revenue bonds shall be sold in such manner at such price and at such rate or rates of interest as the metropolitan council shall deem to be for the best interests of the metropolitan municipal corporation, either at public or private sale.

The metropolitan council may at the time of the issuance of such revenue bonds make such covenants with the purchasers and holders of said bonds as it may deem necessary to secure and guarantee the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guarantee the payment of such principal and interest, to maintain rates sufficient to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bondholders to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the metropolitan council may deem necessary to accomplish the most advantageous sale of such bonds. The metropolitan council may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The metropolitan council may include in the principal amount of any such revenue bond issue an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any such metropolitan facilities plus six months. The metropolitan council may, if it deems it to the best interest of the metropolitan municipal corporation, provide in any contract for the construction or acquisition of any metropolitan facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds at the par value thereof.

If the metropolitan municipal corporation shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the holder of anh such bond may bring action against the metropolitan municipal corporation and compel the performance of any or all of such covenants.

35.58.470 Funding, refunding bonds. The metropolitan council may, by resolution, without submitting the matter to the voters of the metropolitan municipal corporation, provide for the issuance of funding or refunding general obligation bonds to refund any outstanding general obligation bonds or any part thereof at maturity, or before maturity if they are by their terms or by other agreement subject to prior redemption, with the right in the metropolitan council to combine various series and issues of the outstanding bonds by a single issue of funding or refunding bonds, and to issue refunding bonds to pay any redemption premium payable on the outstanding bonds being refunded. The funding or refunding general obligation bonds shall, except as specifically provided in this section, be issued in accordance with the provisions of this chapter with respect to general obligation bonds.

The metropolitan council may, by resolution, without submitting the matter to the voters of the metropolitan municipal corporation, provide for the issuance of funding or refunding revenue bonds to refund any outstanding revenue bonds or any part thereof at maturity, or before maturity if they are by their terms or by agreement subject to prior redemption, with the right in the metropolitan council to combine various series and issues of the outstanding bonds by a single issue of refunding bonds, and to issue refunding bonds to pay any redemption premium payable on the outstanding bonds being refunded. The funding or refunding revenue bonds shall be payable only out of a special fund created out of the gross revenue of the particular utility, and shall be a valid claim only as against such special fund and the amount of the revenue of the utility pledged to the fund. The funding or refunding revenue bonds shall, except as specifically provided in this section, be issued in accordance with the provisions of this chapter with respect to revenue bonds.

The metropolitan council may exchange the funding or refunding bonds at par for the bonds which are being funded or refunded, or it may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the metropolitan municipal corporation.

35.58.480 Borrowing money from component city or county. A metropolitan municipal corporation shall have the power when authorized by a majority of all members of the metropolitan council to borrow money from any component city or county and such cities or counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the legislative bodies of the metropolitan municipal corporation and any such component city or county to provide funds to carry out the purposes of the metropolitan municipal corporation.

35.58.490 Interest bearing warrants. If a metropolitan municipal corporation shall have been authorized to levy a general tax on all taxable property located within the metropolitan municipal corporation in the manner provided in this chapter, either at the time of the formation of the metropolitan municipal corporation or subsequently, the metropolitan council shall have the power to authorize the issuance of interest bearing warrants on such terms and conditions as the metropolitan council shall provide same to be repaid from the proceeds of such tax when collected.

35.58.500 Local improvement districts -- Utility local improvement districts. The metropolitan municipal corporation shall have the power to levy special assessments payable over a period of not exceeding 20 years on all property within the metropolitan area specially benefited by any improvement, on the basis of special benefits conferred, to pay in whole, or in part, the damages or or costs of any such improvement, and for such purpose may establish local improvement districts and enlarged local improvement districts, issue local improvement warrants and bonds to be repaid by the collection of local improvement assessments and generally to exercise with respect to any improvements which it may be authorized to construct or acquire the same powers as may now or hereafter be conferred by law upon cities of the first class. Such local improvement districts shall be created and such special assessments levied and collected and local improvement warrants and bonds issued and sold in the same manner as shall now or hereafter be provided by law for cities of the first class. The duties imposed upon the city treasurer under such acts shall be imposed upon the treasurer of the county in which such local improvement district shall be located.

A metropolitan municipal corporation may provide that special benefit assessments levied in any local improvement district may be paid into such revenue bond redemption fund or funds as may be designated by the metropolitan council to secure the payment of revenue bonds issued to provide funds to pay the cost of improvements for which such assessments were levied. If local improvement district assessments shall be levied for payment into a revenue bond fund, the local improvement district created therefor shall be designated a utility local improvement district.

35.58.530 Annexation -- Requirements, procedure. Territory annexed to a component city after the establishment of a metropolitan municipal corporation shall by such act be annexed to such corporation. Territory within a metropolitan municipal corporation may be annexed to a city which is not within such metropolitan municipal corporation in the manner provided by law and in such event either (1) such city may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of the city concurred in by resolution of the metropolitan council, or (2) if such city shall not be so annexed such territory shall remain within the metropolitan municipal corporation unless such city shall by resolution of its legislative body request the withdrawal of such territory subject to any outstanding indebtedness of the metropolitan corporation and the metropolitan council shall be resolution consent to such withdrawal.

Any territory contiguous to a metropolitan municipal corporation and lying wholly within an incorporated city or town may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of such city or town requesting such annexation concurred in by resolution of the metropolitan council.

Any other territory adjacent to a metropolitan municipal corporation may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in this chapter. An election to annex such territory may be called pursuant to a petition or resolution in the following manner:

(1) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the territory to be annexed and shall be filed with the auditor of the central county.

(2) A resolution calling for such an election may be adopted by the metropolitan council.

Any resolution or petition calling for such an election shall describe the boundaries of the territory to be annexed, and state that the annexation of such territory to the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons or property within the metropolitan municipal corporation and within the territory proposed to be annexed.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon.

For the purpose of examining the signatures on such petition, the auditor shall be permitted access to the voter registration books of each city within the territory proposed to be annexed and of each county a portion of which shall be located within the territory proposed to be annexed. No person may withdraw his name from a petition after it has been filed with the auditor. Within 30 days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his certificate as to the sufficiency thereof.

Source: Washington; Wash. Rev. Code Ann. Chap. 35 (Supp. 1972).

2.9 State or Agency "Take-Over" of Noncomplying Communities' Facilities.

A problem may arise where one or more municipalities which are participants in an areawide plan refuse to cooperate with other participants as required by the areawide plan. One solution to this problem would be for either the state-level agency or the areawide agency to "take-over" operation of facilities belonging to the recalcitrant municipality and thus bring the offender into compliance with the areawide plan. Suggested legislation authorizing such a "take-over" is set out below.

A. PROVISION AUTHORIZING AGENCY TO "TAKE-OVER" OPERATION OF NONCOMPLYING MUNICIPALITY'S FACILITIES.

Purpose: Allows agency to take command of a municipality's treatment facilities in order to bring that municipality into compliance with the areawide plan.

Provision authorizing "take-over" of facilities:

"(1) The [insert agency] in case of failure by any municipality or its governing or managing body or officers to comply with any order of the agency for the construction, installation, maintenance, or operation of a disposal system or part thereof, may be resolution assume the powers of the legislative authority of the municipality and confer on the [agency] the powers of the administrative officers of the municipality relating to the construction, installation, maintenance or operation of a disposal system, or par thereof, or issuing bonds and levying taxes therefor, upon notice specifying the particulars of the alleged failure to comply with the order and the powers proposed to be assumed for the purpose of remedying such failure. The resolution shall include or have attached thereto a copy of the order, shall set forth the findings of the [agency] as to failure of compliance therewith after the hearing thereon, and shall set forth the powers assumed and determine the action to be taken. Certified copies of the resolution and order shall be transmitted by the secretary of the [agency] to the clerk or other recording officer of the municipality concerned. The resolution and order and certified copies thereof shall be prima facie evidence that the order is reasonable and valid, that all requirements of law relating thereto and to the hearing thereon have been complied with by the agency, that the municipality and its governing or managing body and officers have failed to comply with the order as set forth in the resolution, and that the powers so assumed are vested in the [agency] as therein set forth. Thereupon the [agency] shall have charge of the case, and all other proceedings for enforcement of the order shall be suspended until the authority of the [agency] in the case has been terminated. At this stage of the case there is a right of judicial review, and the resolution and attached order shall be deemed a final order for the purpose of judicial review, but failure at this stage to seek judicial review does not preclude judicial relief at a subsequent stage where, and in a manner, otherwise appropriate.

(2) Upon the assumption of powers as provided in subdivision 1, all the powers of the municipality and its governing or managing body and officers with respect to the subject matter of the order shall thereby be forthwith transferred to and vested in the [agency] and they shall thereafter exercise the same in the name of the municipality or its governing or managing body or officers, as the case may require, until terminated. Such powers shall include, without limitation, the power to levy taxes, to certify such taxes for collection, to levy assessments or benefited property, to prescribe service or use charges, to borrow money, to issue bonds, to employ necessary assistance, to acquire necessary real or personel property, to let contracts or otherwise provide for the doing of work or the construction, installation, maintenance, or operation of facilities, and to do and perform for the municipality or its governing or managing body or officers all other acts and things required to effectuate, carry out, and accomplish the purposes of the order and which might have been done or performed by the municipality or its governing or managing body or officers. The exercise of any and all such

powers by the [agency] shall have like force and effect as if the same had been exercised by the municipality or by its governing or managing body or officers. All such acts or things done or performed by the [agency] shall be prima facie lawful and valid, and it shall be presumed that all requirements of law or charter relating thereto have been complied with."

Source: Adapted from Minnesota; Minn. Stat. Ann. §115.48(1964).

B. ALTERNATIVE PROVISION AUTHORIZING STATE-LEVEL AGENCY TO "TAKE-OVER" OPERATION OF A MUNICIPALITY'S FACILITIES.

Purpose: Same.

Alternative provision authorizing "take-over" of facilities:

"Upon the failure of a municipality to comply with an order of the [name of agency] to correct deficiencies in the operation of sewerage systems or treatment works, the [agency] shall take charge of and operate such systems or works so as to bring the municipality into compliance.

All costs for maintenance, operation and other services including legal fees incidental to taking possession of the sewerage system or treatment works shall be charged to the municipality against which the original order of the [agency] was served."

Source: Adapted from Maryland; Md. Ann. Code art. 33B, §8(1971).

C. PROVISION AUTHORIZING LOCAL AGENCY TO "TAKE-OVER" OPERATION OF A MUNICIPALITY'S FACILITIES.

Purpose: Allows a local or areawide agency to "take-over" operation of the treatment facilities of one of its members which is not complying with the areawide plan.

Provision authorizing "take-over" of facilities by a local agency:

"If a municipality or other participant of an areawide waste treatment management plan fails to comply with any portion of an approved areawide plan adopted by the [agency] the [agency] shall be fully authorized to assume the powers of the municipality relating to performance of all or any part of the areawide plan including, but not limited to, the construction, installation, maintenance, or operation of a waste treatment system, or any part thereof. Such powers shall include all acts and things necessary to effectuate, carry out, and accomplish the purposes of the areawide plan, provided that such things might have been done or performed by the municipality. All powers exercised by the [agency] on behalf of the municipality shall have the same force and effect as if such powers had been exercised by the municipality acting on its own behalf.

If the officers or governing body of the municipality agree to exercise their powers in compliance with the areawide plan, the [agency] may reinstate all or any of such powers subject to specified conditions, and the municipality may then exercise such powers accordingly."

Source: Suggested by authors.

2.10 Denial of State Funds for Failure to Comply with Areawide Plan.

Another possible sanction, short of outright "take-over" of facilities, would be to force the noncomplying municipality to comply by offering a choice between compliance and loss of state funds used for financing all municipal projects (not merely for sewage treatment). The following suggested legislation authorizes such a denial of state funds as an incentive for municipalities to comply with the areawide plan.

A. PROVISION FOR DENIAL OF STATE FUNDS.

Purpose: Encourages municipalities to comply with an areawide plan by denying use of state funds for sewage treatment projects until compliance is made.

Provision for denial of state funds:

"The [state-level agency] shall have the power and authority to:

a. Deny state assistance to any municipality which fails to operate and maintain its sewage treatment works in accordance with qualifications for state assistance applicable to such works.

b. Make an annual inspection of operating conditions and results, including the collection of necessary flow and analytical data and sampling, at each sewage treatment plant for the maintenance and operation of which state assistance is granted pursuant to this section.

c. Promulgate such rules and regulations as may be necessary, proper or desirable to carry out effectively the provisions of this section, including, but not limited to, standards of operating efficiency for sewage treatment works, based on the best usage of the receiving waters, type of treatment provided, and available dilution."

Source: New York; N.Y. Environ. Conser. Law §17-1905 (4)(1973).

B. ALTERNATIVE PROVISION FOR DENIAL OF STATE FUNDS.

Purpose: Denies use of state funds for any municipal project until the municipality complies with the areawide plan.

Alternative provision for denial of state funds:

"If a municipality fails to comply with any provisions of an areawide waste treatment management plan, all State funds relating to the income tax, the amusements tax, the license tax, and [insert appropriate taxes] thereafter to be distributed to the municipality may be withheld from such municipality and may be applied by the [comptroller or other fiscal officer] directly for the purposes of bringing such municipality into compliance. Such right to withhold and apply directly shall exist only so long as reasonably necessary to bring such municipality into compliance with the areawide plan.

Source: Adopted with substantial changes from Maryland; Md. Ann. Code art. 33B, §7(b)(1971).

PART THREE

Suggested Legislation for Land Use Control and Control of Non-Point Sources

3.0 LAND USE CONTROLS

Various types of land use controls may be effective ways of controlling water pollution on an areawide basis. Section VIII of the report, Problems and Approaches to Areawide Water Quality Management, gave examples of such controls and the problems associated with them. One problem is the lack of the requisite legislation to authorize the methods.

Suggested or model legislation to alleviate the shortcomings in present land use control authority is set forth below.

A. ENABLING ACT WHICH INCLUDES ENVIRONMENTAL CONCERNS.

Purpose: To include in the enabling act the prevention of water and other forms of pollution as a factor in land use planning and zoning.

Enabling act:

Purposes of Planning and Zoning.

All land use planning and zoning shall be made with the general purpose of guiding and accomplishing the coordinated, adjusted, and harmonious development of the jurisdiction, and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development; including among other things, adequate provisions for traffic, the promotion of public safety, adequate provision for light and air, conservation of natural resources, the prevention of environmental pollution, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

Source: Adapted from Md. Ann. Code art. 66B, §3.06 (1970).

B. LOCATION OF COMMERCIAL AND INDUSTRIAL DEVELOPMENTS TO MINIMIZE POLLUTION.

Purpose: To regulate the location of potentially harmful industrial developments.

Act to regulate the location of industrial and commercial developments:

Section 1 Findings and Purpose

(a) The Legislature finds that the economic and social well-being of the citizens of the State depend upon the location of commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

(b) The purpose of this act is to provide a flexible and practical means by which the State, acting through appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

Section 2 Definitions

As used in this act:

(1) "Commission" means the [appropriate state agency].

(2) "Development which may substantially affect environment" means any commercial or industrial development [which requires a license from the commission, or] which occupies a land area in excess of [twenty] acres, or which contemplates drilling for or excavating natural resources, excluding borrow pits for sand, fill or gravel, regulated by the [State Highway Commission] and

pits of less than [five] acres, or which occupies on a single parcel a structure or structures in excess of a ground area of [60,000 square feet].

(3) "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from nonnaturally occurring contamination.

(4) "Person" means any person, firm, corporation or other legal entity.

Section 3 Notification Required

Any person intending to construct or operate a development which may substantially affect local environment, before commencing construction or operation, shall notify the commission in writing of his intent and of the nature and location of such development. The commission shall within [fourteen] days of receipt of such notification, either approve the proposed location or schedule a hearing thereon in the manner hereinafter provided. The notification requirement of this section is in addition to other applicable requirements of state law.

Section 4 Hearings; Orders; Construction Suspended

(a) If the commission determines to hold a hearing on a notification submitted to it pursuant to Section 3, it shall hold such hearing within [thirty] days of such determination, and shall cause notice of the date, time and place thereof to be given to the person intending the development and in addition shall give public notice thereof by causing such notice to be published in some newspaper of general circulation in the proposed locality, or if none, in the state paper; the date of the first publication to be at least [ten], and the last publication to be at least [three] days before the date of the hearing.

(b) At such hearing the commission shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare.

(c) The commission shall approve a development proposal whenever it finds that:

(1) The proposed development has the financial capacity and technical ability to meet state air and water pollution control standards, has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.

(2) The proposed development has made adequate provision for loading, parking and traffic movement from the development area onto public roads.

(3) The proposed development has made adequate provision for fitting itself harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the municipality or in adjoining municipalities.

(4) The proposed development will be built on soil types which are suitable to the nature of the undertaking.

(d) At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that each of the criteria for approval listed in the preceding paragraphs has been met, and that the public's health, safety and general welfare will be adequately protected.

(e) The commission shall adopt, and may amend and repeal rules for the conduct of hearings held under this section in the same manner as provided for the adoption, amendment and repeal of rules of practice before it. A complete verbatim transcript shall be made of all hearings held pursuant to this section.

(f) Within [forty-five] days after the commission adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the commission deems advisable to protect and preserve the environment and the public's health, safety and general welfare.

(g) Any person who has notified the commission, pursuant to Section 3 of his intent to create a development substantially affecting local environment shall, upon receipt of notice that the commission has determined to hold a hearing under this section, immediately defer or suspend construction or operation with respect to such development until the commission has issued its order after such hearing.

Section 5 Failure to Notify Commission; Hearing; Injunctions; Orders

(Omitted)

Section 6 Enforcement

All orders issued by the commission under this act shall be enforced by the Attorney General. If compliance with any order of the commission is not had within the time period therein specified, the commission shall immediately notify the Attorney General of this fact. Within [thirty] days thereafter the Attorney General shall bring an appropriate civil action designed to secure compliance with such order.

Section 7 Judicial Review

Any person, with respect to whose development the commission has issued an order after hearing pursuant to Section 4, may within [thirty] days after notice of such order, appeal therefrom to the [court]. Notice of such appeal shall be given by the appellant to the commission. The proceedings shall not be de novo. Review shall be limited to the record of the hearing before and the order of the commission. The court shall decide whether the commission acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgement affirming or nullifying such determination.

Section 8 Applicability

This act shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on [date], or to any development the construction and operation of which has been specifically authorized by the Legislature prior to the effective date hereof, or to public service corporation transmission lines.

Section 9 State Administrative Practices Act (Omitted)

Source: Council of State Governments, 1971 Suggested State Legislation, Vol. XXX.

C. PROTECTION OF WATERS THROUGH PLANNING AND ZONING.

Purpose: To protect water resources by authorizing general state plans and local zoning regulations for shorelands.

Navigable waters protection law (§144.26)

(1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(a) "Subcommittee" means the water subcommittee of the natural resources council of state agencies.

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

(e) "Regulation" refers to ordinances enacted under ss. 59.971 and 62.23(7) and means shoreland subdivision and zoning regulations which include control of uses of lands under, abutting or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages and counties.

(f) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(g) "Shorelands" means the lands specified under par. (e) and s. 59.971(1).

(3) (a) The subcommittee shall serve in an ex officio advisory capacity to the department and provide a liaison function whereby the several state agencies may better co-ordinate their activities in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations, through the subcommittee, to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the university of Wisconsin, local units of government and other sources.

3. Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(5) (a) The department shall prepare a comprehensive plan as a guide for the application of municipal ordinances regulating navigable waters and their shorelands as defined in this section for the preventive control of pollution. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state or within counties and shall be governed by the following general standards:

1. Domestic uses shall be generally preferred.

2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

4. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(b) The department shall apply to the plan the standards and criteria set forth in sub. (6).

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration.

Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually co-operate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and s. 59.971 shall be construed together to accomplish the purposes and objective of this section.

Zoning of shorelands on navigable waters (§59.971)

(1) To effect the purposes of s. 144.26 and to promote the public health, safety and general welfare, counties may, by ordinance enacted separately from ordinances pursuant to s. 59.97, zone all lands (referred to herein as shorelands) in their unincorporated areas within the following distances from the normal high-water elevation of navigable waters as defined in s. 144.26 (2)(d): 1,000 feet from a lake, pond or flowage; 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater. If the navigable water is a glacial pothole lake, the distance shall be measured from the high watermark thereof.

(2) (a) Except as otherwise specified, all provisions of s. 59.97 apply to ordinances and their amendments enacted under this section, but they shall not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(3) All powers granted to a county under s. 236.45 may be exercised by it with respect to shorelands, but it must have or provide a planning agency as defined in s. 236.02(1).

(4) (a) Section 66.30 applies to this section, except that for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance. If the municipalities as defined in s. 144.26 are served by a regional planning commission under s. 66.945, the commission may, with its consent, be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.99, and the procedures of that section apply.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.97 that relate to shorelands.

(6) If any county does not adopt an ordinance by [insert date], or if the department of natural resources, after notice and hearing, determines that a county has adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives of s. 144.26(1), the department shall adopt such an ordinance.

Source: Wis. Stat. Ann. §§144.26, 59.971 (Supp. 1972).

D. NATURAL RESOURCES PLANNING IN COASTAL ZONES.

Purpose: To authorize development of a comprehensive plan for the conservation and development of natural resources in coastal zones.

COASTAL ZONES

191.110 Policy. The Legislative Assembly finds and declares that:

(1) The coastal zone in this state is an important and valuable part of the natural resources of this state and that because of its value there exists a need for its protection through the development and maintenance of a balance between conservation and developmental interests with respect to such natural resources.

(2) There exists a conflict in the development and use of the natural resources of the coastal zone among industrial interests, commercial and residential development interests, recreational interests, power resource interests, transportation and other navigational interests, waste disposal interests and fish and other marine resource interests.

(3) To further the policy of this state in the protection, preservation, development and, where practicable, the restoration of the natural resources of the coastal zone, a commission should be established to develop and prepare a comprehensive plan for the conservation and development of the natural resources of the coastal zone that will provide the necessary balance between conflicting public and private interests in the coastal zone. (Coastal zone definition omitted.)

191.140 Functions of commission and coordinating committees. The commission and the four coordinating committees shall:

(1) Study the natural resources of the coastal zone and recommend the highest and best use of such resources.

(2) Not later than [insert date], prepare and submit a report, including the findings of its study, a proposed comprehensive plan for the preservation and development of the natural resources of the coastal zone and any maps, charts and other information and

materials that are considered by them to be necessary in such report, to the Governor and to the Legislative Assembly of the State of Oregon.

(3) Not later than [insert date], prepare and submit a preliminary and, if possible, a final report of their progress in the study and formulation of the comprehensive plan described by subsection (2) of this section to the Governor and the Legislative Assembly of the State of Oregon.

(4) Advise the Governor from time to time on the findings being made by them and propose policies and interim measures for implementation by the Governor and state agencies that they consider to be necessary for the proper preservation and development of the coastal zone prior to completion of its comprehensive plan for the coastal zone. [1971 c.608 §4]

191.150 Plan content.

(1) The plan described by subsection (2) of ORS 191.140 shall reflect a balancing of the conservation of the natural resources of the coastal zone and the orderly development of the natural resources of the coastal zone. Such plan shall be prepared in a form designed to be used as a standard against which proposed uses of the natural resources of the coastal zone may be evaluated. In the event of conflicting uses of the natural resources of the coastal zone, the plan shall establish a system of preferences between such conflicting uses that are consistent with the control of pollution and the prevention of irreversible damage to the ecological and environmental qualities of the coastal zone.

(2) In preparing the plan described by subsection (2) of ORS 191.140, the commission and its coordinating committees shall consider:

(a) The quality, quantity and movement of estuarine and other coastal waters, whether tidal or nontidal in character.

(b) The ecological balance of estuarine and marine resources.

(c) The economic interests in the coastal zone, including but not limited to commercial and recreational fishing interests.

(d) The projected population growth and employment needs within the coastal zone.

(e) Scientific information regarding the hydrology, geology, topography, ecology and other relevant scientific data relating to the coastal zone as provided by state agencies.

(f) Plans, surveys and inventions that have been or are being made with respect to the coastal zone by federal, state and local governmental agencies.

(g) Comprehensive land use plans and local zoning ordinances administered by local governmental agencies having jurisdiction over lands within the coastal zone. [1971 c.608 §5]

191.160 Duties of commission. (Omitted)

191.170 Assistance of state and local governments.

(1) All state and local governmental agencies shall cooperate, assist and participate with the commission and its coordinating committees in carrying out the purposes of ORS 191.110 to 191.180.

(2) The Governor shall designate members of state agencies that are affected by or interested in the studies and planning conducted by the commission and coordinating committees pursuant to ORS 191.140 to assist the commission and coordinating committees in the performance of their duties set forth in ORS 191.140. [1971 c.608 §7]

191.180 Review of plans by state natural resource agencies. The state natural resources agencies shall review any preliminary or final comprehensive plans referred to in ORS 191.140 and shall incorporate comments and recommendations in a report to the Governor and to the Legislative Assemblies.

Source: Oregon Rev. Stat. §§191.110 et seq. (1971).

3.1 Permits and Licenses

This section will provide suggested legislation for implementing the permit and licensing controls described in Section VIII of the Report.

A. PERMIT SYSTEM FOR REGULATING ANIMAL FEEDLOTS.

Purpose: To protect the environment from animal waste pollution by requiring permits to operate feedlots.

Confined Animal Feeding Environmental Control Act

An Act regulating the construction and operation of livestock, poultry, and other confined animal feeding facilities to protect the environment and for related purposes [amplify to meet state requirements].

Be it enacted by the Legislative of the State of [   ].

Section 1 [Definitions.]

As used in this Act:

(1) "Person" means any individual, partnership, corporation, other legal entity, or governmental agency of this State or any subdivision thereof.

(2) "Director" means the official responsible for administration of state environmental quality standards.

(3) "Confined feeding" refers to any feeding and/or holding operation whether commercial, experimental, or otherwise conducted within a confined feeding area sheltered or unsheltered in which livestock, poultry, or other animals are maintained.

(4) "Confined feeding area" means an area of land devoted to a confined feeding and/or holding operation less than the area of land necessary for the soil assimilation of animal wastes generated by the animals on such land without violating this Act and regulations issued thereto and applicable state and federal laws. The director shall promulgate regulations consistent with this definition specifying areas to be included in terms of quantitative animal densities relative to land area.

(5) "Confined feeding facility" means:

(i) Any confined feeding area upon which [ ] animal units are or were confined for more than a total of 30 days in a current calendar year;

(ii) Upon identification based upon substantial evidence and written notification by the director, any confined feeding operation or operations which are owned or under the control directly or indirectly, in whole or in part, by the same person or persons, which may violate this Act, regulations issued thereto, or applicable state and federal laws.

Section 2 [Purpose.]

This Act is intended to (1) protect the environment from pollution by animal wastes resulting from the operation of confined feeding facilities; (2) ensure an adequate supply of livestock and poultry products to the public.

Section 3 [Permit Required for Confined Facility Construction, Modification, Operation; Voluntary Registration.]

(a) No person shall construct, substantially modify, or operate any confined feeding facility after [specify date] without a permit obtained from the director pursuant to the provisions of this Act.

(b) Any person not otherwise required under the provisions of this Act to obtain a permit, may voluntarily apply for and be entitled to receive such a permit from the director, upon compliance with the provisions of this Act. Such person, upon receipt of a permit, shall be subject to all provisions of this Act and to all rules and regulations promulgated thereunder.

Section 4 [Permit Applications; Conditions; Issuance.]

(a) Each application for a permit under Section 3 shall be made to the director on a form prescribed by him and shall contain all information required to appear on the form pursuant to regulations promulgated by the director. In addition to information supplied in the application form, the director may require that the operator furnish additional data as may be necessary for approval or disapproval of the application. Each application shall be accompanied by a fee of $[ ].

(b) A permit shall be issued if the director determines upon the basis of the information in the application and an inspection of the confined feeding area involved, that the operation of a confined feeding facility on such area will not, subject to the provisions of Section 6 of this Act, violate (1) this Act and regulations issued thereto and applicable state and federal laws (concern for local requirements may be limited to the extent that local authority is preempted by state action); or (2) any rule, regulation, or guideline promulgated by the director pursuant to this Act.

(c) In making a determination pursuant to subsection (b) of this section, the director shall take into account the environmental hazards resulting from sporadic waste discharges associated with confined feeding operations, as well as average waste loads.

(d) The director may grant a special permit for the construction, modification, or operation of a confined feeding facility as a research, experimental, or demonstration project, pursuant to regulations to be promulgated by him if such facility, in his judgment, would contribute substantial benefits toward environmental improvement.

(e) Prior to refusal of a permit or requiring conditions in a permit, the director shall notify the applicant of the proposed action and afford him an opportunity to present his views thereon in accordance with procedures established in regulations promulgated by the director. A permit shall be denied only on the basis of substantial evidence of record. When a permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the applicant's right to file a further application after revisions are made by the applicant to meet objections specified as reasons for the denial.

Section 5 [Permits: Terms, Periods, and Conditions.] (Omitted)

Section 6 [Permits; Environmental Quality Requirements; Revisions.]

All permits shall be conditioned upon continued compliance with this Act, regulations issued pursuant thereto, and applicable state and federal laws and regulations. If such requirements are revised or modified, all permittees whose permitted acts are affected by the revised or modified requirements shall take such action as is necessary to comply with such revised or modified requirements. Such action shall be completed as directed by a schedule for compliance contained in such revised or modified requirements within a reasonable time, not to exceed 5 years from the effective date of such revision or modification.

Section 7 [Inspection and Entry.]

To carry out the purposes of this Act or any rule, regulation, or permit issued thereunder, the director or his authorized representative, upon presentation of his legal credentials:

(1) Shall have a right of entry to, upon, or through any permits on which any confined feeding facility is operated, or in which any records are required to be maintained by this Act; except that he shall not enter a confined feeding facility until sanitary precautions recommended by the [state veterinarian or state director of public health] to prevent the spread of contagious diseases have been complied with or whenever a contagious or exotic animal disease is determined to exist by the [state veterinarian or state director of public health] except as determined by such appropriate official;

(2) May at reasonable times have access to and copy any records required to be maintained by this Act;

(3) May inspect any monitoring equipment or method; and

(4) May have access to and sample (i) any surface or ground waters leaving the operator's premises and (ii) any waste sources resulting from the operation of the confined feeding facility.

Section 8 [Permits: Revocation, Modification, or Suspension.]

(Omitted)

Section 9 [Promulgation of Rules and Regulations.]

(a) The director shall promulgate pursuant to [cite applicable state law prescribing procedures for issuance of rules and regulations] such rules, regulations, permits, and guidelines as he determines necessary to carry out the provisions and purposes of this Act which shall contain at least the following provisions:

(1) The criteria and other requirements for permit application and issuance;

(2) Identification of the records and reports required to be maintained by permittees;

(3) Design and construction standards and criteria based on substantial information of record for confined feeding facilities;

(4) Guidelines for the adequate handling, treatment, disposal, management, and control of waste resulting from confined feeding facilities; and

(5) Guidelines for liquidation of terminated permittee's operations (within a period not to exceed one year following termination notwithstanding provisions of Section 5).

(b) Rules, regulations, and guidelines under this Act shall be promulgated only after notice, hearing, and an opportunity to present oral and written statements and shall be based upon evidence included in the record of such hearing. All such rules, regulations, and guidelines shall be reasonable and practicable.

(Sections 10 through 17 omitted.)

Section 18 [Citation of Act.]

This Act may be cited as the [(State)] Confined Animal Feeding Environmental Control Act.

Source: Council of State Governments, 1973 Suggested State Legislation, Vol. XXXII.

B. SURFACE MINING PERMITS FOR CONTROL OF WATER POLLUTION.

Purpose: To require operators of surface mining operations to obtain a permit and demonstrate that they will minimize the pollution caused by their work in order to control nonpoint pollution from mines.

§ 1396.3a License

(a) After [insert date], it shall be unlawful for any person to proceed to mine coal or to conduct an active operation to mine other minerals, by the surface mining method as an operator within this Commonwealth without first obtaining a license as a surface mining operator from the department. Applications for licensure as surface mining operators shall be made in writing to the department, upon forms prepared and furnished by the department, and shall contain such information as to the applicant, or when the application is made by a corporation, partnership or association as to its officers, directors and principal owners, as the department shall require. (Provisions for license fees omitted.)

Penalty.--Any person who proceeds to mine minerals by the surface mining method as an operator without having applied for and received a license as herein provided or in violation of the terms thereof shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five thousand dollars ($5,000) or in an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work which may reasonably be required in order to restore the land to its condition prior to the commencement of said unlawful activities, or undergo imprisonment not exceeding one year, or both. The fine shall be payable to the Surface Mining Conservation and Reclamation Fund.

(b) The department shall not issue any new surface mining operator's license or renew any existing surface mining operator's license to any person or operator if it finds, after investigation, that the applicant for licensure or renewal has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby. Where the applicant is a corporation, partnership or association, the department shall not issue such license or renewal if, after investigation, it finds that any

officer or director or principal owner of such corporation, partnership or association has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby, or if any such officer or director or principal owner is or has been an officer or director or principal owner of any other corporation, partnership or association, which has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby.
(Balance of section omitted.)

§ 1396.4 Permits; maps, plans or photographs; reclamation plan; judicial review; bond or deposit

(a) Before any person licensed as a surface mining operator shall hereafter proceed to mine minerals by the surface mining method, he shall apply to the department, on a form prepared and furnished by the department, for a permit for each separate operation, which permit when issued shall be valid until such operation is completed or abondoned, unless sooner suspended by the secretary.

(b) Upon receipt of an application, the department shall review the same and shall make such further inquiries, inspections or examinations as may be necessary or desirable for a proper evaluation thereof. Should the secretary object to any part of the proposal, he shall promptly notify the operator by registered mail of his objections, setting forth his reasons therefor, and shall afford the operator a reasonable opportunity to make such amendments or take such other actions as may be required to remove the objections. No application shall be approved with respect to any operator who has failed, and continues to fail to comply with the provisions of this act or of any act repealed or amended hereby, as applicable, or with the terms or conditions of any permit issued under "The Clean Streams Law" of June 22, 1937 (P.L. 1987), as amended, or where any claim is outstanding against any operator, or in the case of a corporate operator against any officer or director, under this act or any act repealed or amended hereby. Should any operator be aggrieved by any action of the secretary under this subsection, or by the failure of the secretary to act upon his application for a permit, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said Board he may further appeal as provided by the Administrative Agency Law.

(c) Prior to commencing surface mining, the operator shall file with the department a bond for the land affected by each operation on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the requirements of this act and of the act of June 22, 1937 (P.L. 1987), known as "The Clean Streams Law." The amount of the bond required shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan. Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including the proposed land use and the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations.

Source: Pennsylvania, Pa. Stat. Ann. tit. 52, §§1396.3a and 1396.4 (Supp. 1972).

C. PROVISION FOR LICENSING OF WASTEWATER TREATMENT PERSONNEL.

Purpose: To provide a licensing process for qualified personnel who are capable of operating the facilities efficiently and effectively so as to achieve the highest level of treatment.

An Act to protect the public health and to conserve and protect the water resources of the State; to provide for the classifying of all public and private (including industrial) potable water supply systems and public and private (including industrial) wastewater facilities to require the examination of operators and certification of their competency to supervise the operation of such facilities; to prescribe the powers and duties of the state director in these matters; to provide for the promulgation of rules and regulations; to create a board of certification; to provide for reciprocal arrangements; and to prescribe penalties for violation of the Act.

Be it enacted by the Legislature of the State of [ ].

Section 1 [Short Title.]

This Act shall be known and may be cited as the [State] Law for Certification of Operators of Water Treatment Plants. Water Distribution Systems, and Wastewater Facilities.

Section 2 [Definitions.]

(a) "Person" shall mean any individual, partnership, firm association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality, or any other political subdivision of this State, any interstate body, or any other legal entity;

(b) "Operator" shall mean the person in responsible charge of the operation of a potable water treatment plant, water distribution system, or wastewater facility;

(c) "Water supply system" shall mean the system of pipes, structures, and facilities through which water is obtained, treated and sold, distributed, or otherwise offered to the public for household use or any use by humans;

(d) "Potable water treatment plant" shall mean that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water being treated;

(e) "Wastewater facility(ies)" shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial waste and dispose of the effluent;

(f) "Water distribution system" shall mean that portion of the water supply system in which water is stored and conveyed from the potable water treatment plant or other supply point to the premises of a consumer;

(g) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities; recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems, and wastewater facilities, and certification of operators; facilitates reciprocity between state programs; and assists authorities in establishing new certification programs and updating existing ones;

(h) "Director" shall mean the head of either the state health department or state water pollution control authority which is assigned responsibility for administration of this Act.

Section 3 [Classification.]

The director shall classify all potable water treatment plants and water distribution systems actually used or intended for use by the public, and wastewater facilities which discharge into publicly owned wastewater systems, receiving streams, or land used by others. The classification shall take due regard to size and type, character of water or wastewater to be treated, and other physical conditions affecting such treatment plants and distribution systems and according to the skill, knowledge, and experience required of an operator.

Section 4 [Certification.]

The director shall issue certification entitling qualified persons to supervise the operation to potable water and wastewater facilities and water distribution systems after considering the recommendations of the State Board of Certification.

Section 5 [State Board of Certification.]

A State Board of Certification shall be appointed by the Governor to advise and assist the director in the administration of the certification program.

Section 6 [National Association of Certification Authorities.]

The director is authorized when taking action pursuant to Sections 3, 4 and 8 of this Act to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities.

Section 7 [Certification Requirement.]

One year following the effective date of this Act, all potable water treatment plants, water distribution systems, and wastewater facilities, whether publicly or privately owned, used, or intended for use by the public or private persons, must at all times be under the supervision of an operator whose competency is certified to by the director in a classification corresponing to the classification of the plant or distrubution system to be supervised.
(Balance of sections omitted.)

> Source: Council of State Governments, 1973 Suggested Legislation, Vol. XXXII.

3.2 Non-Point Source Control

A pollution problem not often covered by legislation or regulation is sedimentation and siltation caused by agricultural, contruction and other activities that can be categorized as non-point sources of pollution. Suggested legislation to apply soil conservation techniques to combatting pollution from these non-point sources is set forth below.

A. PROVISION FOR SOIL EROSION AND SEDIMENT CONTROL.

> Purpose: To control water pollution by establishing a soil erosion and sediment control program, and to minimize pollution by prohibiting certain land-disturbing activities unless methods are employed which apply approved soil conservation techniques.

Prevention and Control of Sedimentation:

An Act to amend the [soil and water conservation districts law] to provide for an acceleration and extension of the program for control of soil erosion and sediment damage resulting from land-disturbing activities within the State; to provide for adoption of a comprehensive statewide soil erosion and sediment control program and guidelines and for adoption by [soil and water conservation districts] of soil erosion and sediment control programs consistent with such statewide program and guidelines; to require the filing and approval of plans for the control of soil erosion and sediment damage in connection with land-disturbing activities;

to provide for inspections and reports; to declare certain acts to be unlawful; to provide for administration and enforcement; to provide for financial and other assistance to districts and the [state soil and water conservation commission] for the purposes of this Act, and making an appropriation for those purposes; and for other purposes.

Be It Enacted by the Legislature of the State of [   ] that the [soil and water conservation districts law] shall be amended by adding at the end thereof the following sections:

Section 1 [Findings and Declaration of Policy.]

The Legislature finds that erosion continues to be a serious problem throughout the State, and that rapid shifts in land use from agricultural and rural to nonagricultural and urbanizing uses, changes in farm and ranch enterprises, operations, and ownership, construction of housing, industrial and commercial developments, streets, highways, recreation areas, schools and universities, public utilities and facilities, and other land-disturbing activities have accelerated the process of soil erosion and sediment deposition resulting in pollution of the waters of the State and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resource uses. It is, therefore, declared to be the policy of this Act to strengthen and extend the present erosion and sediment control activities and programs of this State for both rural and urban lands, and to establish and implement, through the [state soil and water conservation commission], hereinafter referred to as the "Commission," and the [soil and water conservation districts], hereinafter referred to as "districts," in cooperation with counties, municipalities, and other local governments and subdivisions of this State, and other public and private entities, a statewide comprehensive and coordinated erosion and sediment control program to conserve and protect land, water, air, and other resources of the State.

Section 2 [Definitions.]

(a) "Land-disturbing activity" means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the State, including, but not limited to, tilling, clearing, grading, excavating, transporting, and filling of land, other than federal lands, except that the term shall not include such minor land-disturbing activities as home gardens and individual home landscaping, repairs, and maintenance work.

(b) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality, or other political subdivision of this State, any interstate body, or any other legal entity.

(c) "State waters" means any and all waters, public or private, on the surface of the ground, which are contained within, flow through, or border upon the State of [ ] or any portion thereof.

(d) "Erosion and sediment control plan" or "plan" means a plan for the control of soil erosion and sediment resulting from a land-disturbing activity.

(e) "Conservation standards" or "standards" means standards adopted by the Commission or the districts pursuant to Sections 3 and 4, respectively, of this Act.

Section 3 [State Erosion and Sediment Control Program.]

(a) The Commission shall, in cooperation with the [state water quality control agency] and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program. To assist in the development of such a program, the Commission shall name an advisory board of not less than 7 nor more than 11 members, representing such interests as housing, financing, industry, agriculture, recreation, and local governments, and their planning, transportation, health, public works, and zoning commissions or agencies.

(b) To implement this program, the Commission shall develop and adopt by [(date)] guidelines for erosion and sediment control, which guidelines may be revised from time to time as may be necessary. Before adopting or revising guidelines the Commission shall, after giving due notice, conduct public hearings on the proposed guidelines or proposed change in existing guidelines. The guidelines for carrying out the program shall:

(1) Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

(2) Include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

(3) Contain conservation standards for various types of soils and land uses, which standards shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

(c) The program and guidelines shall be made available for public inspection at the office of the Commission.

Section 4 [District Erosion and Sediment Control Program.]

(a) Each district in the State shall, within [ ] year(s) after the adoption of the state guidelines, develop and adopt a soil erosion and sediment control program consistent with the state program and guidelines for erosion and sediment control. (Balance of section omitted.)

Section 5 [Prohibited Land-Disturbing Activities.]

(a) Except as provided in subsection (e) of this section, no person may engage in any land-disturbing activity until he has submitted to the district a plan for erosion and sediment control for such land-disturbing activity and such plan has been reviewed and approved by the district, except that (1) when proposed land-disturbing activities are to be performed on state lands or by or on behalf of a state agency, plans for erosion and sediment control shall be submitted to the Commission instead of the district for review and approval, and (2) where land-disturbing activities involve lands in more than one district, plans for erosion and sediment control may, as an alternative to submission to each district concerned, be submitted to the Commission for review and approval.

(Subsections (b),(c) and (d) omitted.)

(e) Any person owning, occupying, or operating private agricultural and forest lands who has a farm or ranch conservation plan approved by the district and is implementing and maintaining such plan with respect to normal agricultural and forestry activities, or any person whose normal agricultural and forestry practices are in conformance with the conservation standards established pursuant to this Act, shall not be deemed to be engaged in prohibited land-disturbing activity. If there is not available to any such owner, operator, or occupier at least 50 percent cost-sharing assistance or adequate technical assistance for the installation of erosion and sediment control measures required in an approved farm or ranch plan, or for measures to conform agricultural and forestry practices to conservation standards established pursuant to this Act, any such owner, occupier, or operator who shall fail to install erosion and sediment control measures required in an approved farm or ranch conservation plan, or to conform his agricultural and forestry practices to such conservation standards, shall not be deemed to be engaged in prohibited land-disturbing activity subject to penalties under the Act.

Section 6 [Approved Plan Required for Issuance of Grading, Building, or Other Permits.]

No agency authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may issue any such permits unless the applicant therefor submits with his application an erosion and sediment control plan approved by the district, or by the Commission where appropriate, and his certification that such plan will be followed. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

Section 7 [Monitoring, Reports, and Inspections.]

(a) Land-disturbing activities where permit is issued. With respect to approved plans for erosion and sediment control in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit-issuing authority shall provide for periodic inspections of the land-disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-desturbing activities. Notice of such right of inspection shall be included in the permit. If the permit-issuing authority determines that the permittee has failed to comply with the plan, the authority shall immediately serve upon the permittee by registered mail to the address specified by the permittee in his permit application a notice to comply. Such notice shall set forth the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he shall be deemed to be in violation of this Act and upon conviction shall be subject to the penalties provided by the Act.

(b) Other land-disturbing activities except agricultural and forestry operations. With respect to approved plans for erosion and sediment control in connection with all other land-disturbing activities except agricultural and farming operations, the district, or the Commission in connection with plans approved by it, may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections after notice to the resident owner, occupier, or operator, as are deemed necessary to determine whether the soil erosion and sediment control measures required by the approved plan are being properly performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land-disturbing activity. Such resident owner, occupier, or operator shall be given an opportunity to accompany the inspectors. If it is determined that there is failure to comply with the approved plan, the district, or the Commission where appropriate, shall serve upon the person who is responsible for carrying out the approved plan a notice to comply, setting forth the measures needed to be taken and specifying the time in which such measures shall be completed. Such notice shall be by registered mail to the person responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of the Act and subject to the penalties provided by the Act.

(c) Agricultural and forestry operations. With respect to agricultural and forestry operations, the district shall have authority to make on-site inspections to determine if the approved farm or ranch conservation plan is being followed, or, where there is no such plan, to determine if the agricultural and forestry practices are being carried out in conformance with conservation standards established pursuant to this Act. On-site inspections may be made after notice to the resident owner, operator, or occupier of the land involved, and such person shall be given an opportunity to accompany the inspector. If such inspections reveal that an owner, operator, or occupier of agricultural or forestry lands is not complying with the approved farm or ranch conservation plan or is not carrying out his agricultural and forestry practices in conformance with conservation standards established pursuant to this Act, such owner, operator, or occupier shall be notified by registered mail addressed to him at his usual abode or customary place of business of the measures needed for compliance. Such notice shall require that such resident owner, occupier, or operator shall commence such measures within 6 months from the date of the notice and shall complete the same within 12 months of such date. Upon failure to comply with such notice, the owner, occupier, or operator will be deemed in violation of this Act and subject to the penalties provided by the Act.

Source: Council of State Governments, 1973 Suggested State Legislation, Vol. XXXII.

B. PROVISION FOR CONTROL OF NON-POINT CONSTRUCTION RUNOFF.

Purpose: To control runoff and erosion from construction sites by providing in the building code that builders of projects utilize methods and materials which minimize such pollution.

Building Code Provision:

"All buildings, roads, excavations or other structures or construction projects covered by this building code shall be constructed of materials which shall minimize the amount and harmful characteristics of runoff and erosion caused by storm water or other causes. Construction methods used on all projects subject to this building code shall also result in the least amount of runoff and erosion practicable in relation to economic cost and available technology. The [insert agency responsible for promulgation and/or enforcement of building code regulations] shall promulgate regulations and guidelines to accomplish the purposes of this section. Such regulations and guidelines shall be subject to approval by [insert agency responsible for water quality control in the state].

Source: Suggested by authors.

3.3 Pricing Mechanisms

While not required in order to comply with provisions of the Act, the use of fees or charges may be used to regulate pollution and thus protect the state's waters. The Council of State Governments has suggested legislation based on a 1970 Vermont Act to accomplish this purpose. Excerpts from the comments of the Council and the suggested legislation are as follows:

"Vermont has recently enacted water purity legislation patterned after the water management concept practiced in Germany's Ruhr Valley. The legislation requires any person, including municipalities and state agencies, to secure a permit to discharge wastes into public waters. Those polluting state waters must obtain a nonrenewable temporary permit and pay a fee based on the type and amount of the discharge. In this manner, the pollutor pays a direct user charge for the privilege of despoiling public waters. The Vermont statute explicitly recognizes that the principal purpose of imposing pollution charges is to provide the economic incentive for permit holders to reduce the volume and degrading quality of their discharges. Permit charges are required to be used solely for purposes of water quality management and pollution control."

"The committee recognizes the Vermont approach as a significant tool to abate water pollution, and believes several sections of the act, particularly those dealing with permits and fees, deserve careful consideration by States. To facilitate full comprehension of such sections, we have also published other essential portions of the Vermont statute."

A. PROVISION FOR USE OF EFFLUENT CHARGES.

Purpose: Requires dischargers of wastes to pay a fee based on the type and amount of discharge. This may be called an effluent charge or a full cost recovery user charge.

Charging as a regulatory mechanism:

(Title, enacting clause, etc.)

Section 1 Classification of Waters Designated, Reclassification

The [agency] shall determine the degree of water quality and classification for waters within the State to be obtained and maintained in the public interest. The [agency] shall make tests of any water as it deems necessary for determining its classification.

Section 2 Prohibitions

No person, without written authorization of the [agency], shall discharge into waters within the State any waste which by itself or in combination with the wastes of other sources reduces the quality of the receiving waters below the classification established for them. [This section shall not prohibit the proper application of fertilizer to fields and crops.]

Section 3 Discharge Reports Required

Any person discharging treated or untreated waste into waters within the State on a regular, intermittent or continuous basis prior to the effective date of this section and who intends to continue such discharges on and after [date], shall file a written report of such discharges with the [agency] by

[date]. This report shall specify the location, nature, volume and frequency of such discharges. The [agency] may require the person to furnish any additional information it deems necessary to evaluate the effect of such discharges upon the receiving waters.

Section 4 Discharge Permits

(a) Any person intending to discharge waste into the waters of the State on and after [date] shall make application to the [state agency] for a discharge permit. Application shall be made on a form prescribed by the [agency] and shall contain such information as the [agency] requires. An applicant shall pay to the [agency] at the time of submitting his application an amount as the [agency] by rule determines reasonable to defray the expense of reviewing and evaluating an application.

(b) The [agency] shall consider each application and shall grant or deny the requested permit within [sixty] days from the date of receipt of the application. The [agency] may require the applicant to submit any additional information which it considers necessary and may refuse to grant a permit until such time as the information is furnished and evaluated.

(c) If the [agency] finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. If the [agency] finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it shall issue a discharge permit.

(d) A discharge permit shall:

(1) Specify the manner, nature, volume and frequency of the discharge permitted;

(2) Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the [agency];

(3) Contain such additional conditions, requirements and restrictions as the department deems necessary to preserve and protect the quality of receiving waters; and

(4) Be valid for the period of time specified therein.

(e) A discharge permit may be renewed upon application to the [agency]. No renewal permit shall be issued if the [agency] finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them.

Section 5 Temporary Pollution Permits

(a) A person who does not qualify for, or has been denied a waste discharge permit under Section 4 of this act, may apply to the [agency] for a temporary pollution permit. Application shall be made on a form prescribed by the [agency] and shall contain such information as the [agency] may require. Such person shall pay to the [agency] at the time of submitting the application an amount as the [agency] by rule determines reasonable to defray the expense of reviewing and evaluating each application. The [agency] may require such person to submit any additional information it considers necessary for proper evaluation.

(b) Using reasonable means, the [agency] shall give notice to people residing in the drainage area of the receiving waters for the proposed discharge of the time in which they may present written objections to the proposed discharge.

(c) After consideration of the application, any additional information furnished and all written objections submitted, the [agency] shall grant or deny a temporary pollution permit. No temporary permit shall be granted by the [agency] unless it affirmatively finds:

(1) The proposed discharge does not qualify for a discharge permit;

(2) The applicant is constructing, installing or placing into operation, or has submitted plans and reasonable schedules for the construction, installation or operation of an approved pollution abatement facility or alternative waste

disposal system, or that the applicant has a waste for which no feasible and acceptable method of treatment or disposal is known or recognized but is making a bonafide effort through research and other means to discover and implement such a method;

(3) The applicant needs permission to pollute the waters within the State for a period of time after [date] necessary to complete research, planning, construction, installation or the operation of an approved and acceptable pollution abatement facility or alternate waste disposal system;

(4) There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the State;

(5) The denial of a temporary pollution permit would work an extreme hardship upon the applicant;

(6) The granting of a temporary pollution permit will result in some public benefit; and

(7) The discharge will not be unreasonably destructive to the quality of the receiving waters.

(d) A temporary pollution permit issued shall:

(1) Specify the manner, nature, volume and frequency of the discharge permitted;

(2) Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the [agency] as a condition of the permit;

(3) Require the permit holder to maintain such monitoring equipment and make and file such records and reports as the [agency] deems necessary to insure compliance with the terms of the permit and evaluate the effect of the discharge upon the receiving waters;

(4) Be valid only for the period of time necessary for the permit holder to place into operation

the facility, system or method contemplated in his application as determined by the [agency];

(5) Require as a condition of the permit the payment of periodic pollution charges in accordance with pollution charge rates established by the board pursuant to Section 6; and

(6) Shall contain other requirements, and restrictions which the [agency] deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.

Section 6 Pollution Charges

By [date], the [agency] shall fix and establish reasonable pollution charge rates for computing the amounts to be paid by temporary pollution permit holders pursuant to Section 5(d). The [agency] may revise such charge rates from time to time thereafter.

[(1) Purpose: It is expressly recognized that the authorized discharge of certain wastes which will reduce the quality of receiving waters below the established classification represents an expropriation of a valuable public natural resource for private or limited use and that such discharges are permitted under this act for economic reasons in the public interest of providing time during which the degrading effects of such discharges can be abated. The imposition of pollution charges shall have the principal purpose of providing the economic incentive for temporary pollution permit holders to reduce the volume and degrading quality of their discharges during the limited period when such discharges are authorized, thereby raising the quality of the waters in the State. Such charges shall be for the further purpose of portecting, preserving, and benefiting navigation upon the waters of the State and protecting the general public interest in such waters including recreational and aesthetic interest. The charges are not imposed for revenue purposes and any income received by the State under this section shall be used solely for the purposes of water quality management and pollution control.]

[(2) How established: A pollution charge is the price to be paid per unit of waste discharged into waters of the State. The charge may vary among different types of classes of wastes to account for variations in the degrading effects of various wastes. The charges may also vary to account for variations in the water quality standards of different classes and the hydrologic conditions of different receiving waters. In establishing the charges, the [agency] shall attempt to approximate in economic terms the damage done to other users of the waters, both private users and the general public caused by the degrading effect of various types of waste in varying volumes and frequencies of discharge upon water qualities of the different classes of waters. In determining relative degrading effect, the [agency] may employ any scientific or technical criteria or parameters such as biochemical oxygen demand and suspended solids and may express the unit charge in terms of such standards of measurement.]

Source: Council of State Governments, 1971 Suggested State Legislation, Vol. XXX.

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